

# REFRAMING THE EQUITY DEBATE IN THE US EDUCATION SYSTEM

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## Abstract

This paper is driven by the research questions: Why do racial and economic inequities persist in the US educational system? What should be done to address these inequities? It is clear that current education reforms have not adequately addressed the root causes of inequality. There are reforms within the field of education that are worth exploring, and transformative public policy in other areas of society is also needed to produce meaningful change for BIPOC students and students in poverty.

Chapter 1 is a historiography of the 50th anniversary of *Brown v. Board of Education* (1954). Scholars largely agree that gaps between white and African-American students exist in schools. They are less unanimous on *Brown v. Board's* impact on racial justice as a whole. While some historians celebrate the case as a milestone in the country's path towards equality, there is a growing chorus who believe *Brown v. Board* was limited in its impact.

Chapter 2 focuses on who supports charter schools on the state level and which stakeholders are included in any successes. It examines two states known for their significant numbers of charter schools: Louisiana (with an emphasis on New Orleans) and Arizona. In both states, charter school construction was fueled by Republicans in state legislatures, despite the guise of bipartisan support. During their initial development, there was modest support for charter schools from African-Americans in New Orleans and significant support from Latinx people in Arizona. However, these schools have not provided significantly better outcomes for BIPOC students.

Chapter 3 examines school funding for traditional public schools. The first part of the chapter features the case study of New York. Several recent studies suggest increased school funding has made a significant difference in graduation rates and standardized test scores for

NYC students. Despite this, there are still significant gaps in student outcomes for BIPOC students and students in poverty, especially in New York City. The second part of this chapter explores mass incarceration's role on student outcomes, both in New York and nationally. This provides support for why funding should be reallocated from the criminal justice system to schools.

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## Introduction

On May 25, 2020, George Floyd was murdered by a police officer in Minneapolis, Minnesota. The instance of police violence sparked racial justice protests across the US and the world.<sup>1</sup> Racism is part of the fabric of the United States, tracing back to the institution of slavery and colonization of indigenous peoples. The salience of racism and white supremacy in American life today is one of the most fiercely-debated topics in public discourse. In the months after the murder of George Floyd, there was a sense that more Americans were concerned about racism, and that Floyd's murder had the potential to be a catalyst for change. Proposals for police reform or abolition became more mainstream. Soon, virtually every aspect of society was closely analyzed with the lens of race.<sup>2</sup>

The murder of George Floyd occurred during the COVID-19 pandemic, which already directed attention toward racial and economic inequities. Low-wage “essential workers” in the US, who more likely to be people of color, faced dangerous working conditions and were often taken for granted. People with professional-class jobs that enabled them to work from home were more likely to be white and wealthy. Overall, people of color have been disproportionately killed by COVID-19. The juxtaposition of the pandemic added to the gravitas of George Floyd's murder and the ensuing protests. It called into question how racism should be addressed nationwide.<sup>3</sup>

One area beyond police violence that has received an extensive racial critique in the past year is the education system. Education is often called “the great equalizer” – recognizing its

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<sup>1</sup> Christopher Barrie, “Searching Racism after George Floyd,” *Socius: Sociological Research for a Dynamic World* 6 (2020): 1-3.

<sup>2</sup> Nubras Samayeen, Adrian Wong, and Cameron McCarthy, “Space to breathe: George Floyd, BLM plaza and the monumentalization of divided American Urban landscapes,” *Educational Philosophy and Theory* (July 2020): 1-4.

<sup>3</sup> Andrea Catharine Bolduc, “Suburban Protest and Social Conflict: An Analysis of Social Movement Dynamics in Four Boston Area Suburbs During the 2020 George Floyd Protests” (thesis, Brandeis University, 2021), 7.

potential to remedy historic inequalities and give all students an opportunity for success and upward mobility, regardless of their background.<sup>4</sup> After the murder of George Floyd, educators were forced to confront this tragedy and the broader topic of systemic racism with their students. There were also attempts to make schools a more welcoming place – by renaming schools and replacing monuments associated with the Confederacy and other examples of historical racism, reevaluating the presence of police officers in schools, and revising curricula to be more critical and inclusive.<sup>5</sup> In Minnesota alone, the school districts in Minneapolis, Saint Paul, and the suburb of Hopkins have replaced school resource officers with “school support liaisons” or hall monitors.<sup>6</sup> The University of Minnesota will no longer contract out security on campus or at sporting events to the Minneapolis Police Department.<sup>7</sup> A high school in Mendota Heights, near Saint Paul, changed its name from “Henry Sibley High School” to “Two Rivers High School.” (Sibley was the first governor of Minnesota and played an integral role in the US-Dakota War and a mass execution of indigenous people in 1862.)<sup>8</sup>

The most well-known example of revising the latter is the *New York Times*’ 1619 Project. In 2019, journalist Nikole Hannah-Jones facilitated a wide range of reporting and academic essays written by guest authors on the history of slavery and its influence on modern American

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<sup>4</sup> Roslin Growe and Paula S. Montgomery, “Educational Equity in America: Is Education the Great Equalizer?,” *Professional Educator* 25, no. 2 (Spring 2003): 23.

<sup>5</sup> Denise Forte, “The Impact of George Floyd’s Murder: One Year Later,” Ed Trust, The Education Trust, May 25, 2021, <https://edtrust.org/the-equity-line/the-impact-of-george-floyds-murder-one-year-later>.

<sup>6</sup> Anthony Lonetree and Mara Klecker, “In some Minnesota schools, students return but police do not,” *Star Tribune*, Star Tribune Media Company LLC, April 24, 2021, <https://www.startribune.com/in-some-minnesota-schools-students-return-but-police-do-not/600049905>.

<sup>7</sup> Mahita Gajanan, “University of Minnesota Ending Contracts With Minneapolis Police Department After George Floyd’s Death,” *TIME Magazine*, TIME USA, LLC, May 28, 2020, <https://time.com/5843911/george-floyd-death-university-of-minnesota-police>.

<sup>8</sup> Mara Klecker, “Mendota Heights’ Henry Sibley High gets new name,” *Star Tribune*, Star Tribune Media Company LLC, June 23, 2021, <https://www.startribune.com/mendota-heights-henry-sibley-high-school-will-be-renamed-two-rivers/600070952> and Nick Ferraro, “Who was Henry Sibley? And why does it matter now?,” *Pioneer Press*, Northwest Publications, December 8, 2020, <https://www.twincities.com/2020/12/08/who-was-henry-sibley-and-why-does-it-matter-now>.

life.<sup>9</sup> A podcast and school curriculum guide were also produced. These resources are influenced by critical race theory, which “states that U.S. social institutions (e.g. the criminal justice system, education system, labor market, housing market, and healthcare system) are laced with racism embedded in laws, regulations, rules, and procedures that lead to differential outcomes by race.”<sup>10</sup>

The 1619 Project has inspired more teachers to discuss racism in their classrooms. Some argue this increased emphasis on race in education is long overdue, while others critique it as too narrow or as anti-intellectual.<sup>11</sup> In fact, bills have appeared in numerous state legislatures supporting the “ban” of teaching critical race theory in schools.<sup>12</sup> As of July 15, 2021, 26 states have attempted to legislate a ban on teaching critical race theory, drawing criticism that politicians are attempting to stifle discussions on important societal issues.<sup>13</sup> This debate encapsulates the racial reckoning that has arrived in the US, including in the area of education. It exemplifies how racism continues to be a polarizing issue.

Beyond hot-button issues like renaming schools and critical race theory, there is a less publicized but equally meaningful dialogue occurring about racial inequities in schools. Teachers are looking inward and reflecting on their own “implicit bias” and how their classrooms may perpetuate systemic racism. School administrators are asking themselves why gaps in

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<sup>9</sup> Cody R. Melcher, “Who’s Afraid of 1619?: Pedagogy, Race, and Class in the United States,” *Dialectical Anthropology* 45 (2021): 184-185.

<sup>10</sup> Rashawn Ray and Alexandra Gibbons, “Why are states banning critical race theory?,” Brookings, The Brookings Institution, July 2, 2021, <https://www.brookings.edu/blog/fixgov/2021/07/02/why-are-states-banning-critical-race-theory>.

<sup>11</sup> Melcher, “Who’s Afraid of 1619?,” 184-185.

<sup>12</sup> Conor Friedersdorf, “Critical Race Theory Is Making Both Parties Flip-Flop,” *The Atlantic*, Atlantic Media, July 8, 2021, <https://www.theatlantic.com/ideas/archive/2021/07/north-carolina-critical-race-theory-ban-free-speech/619381>.

<sup>13</sup> “Map: Where Critical Race Theory is Under Attack,” *Education Week*, Editorial Projects in Education, Inc., June 30, 2021, <https://www.edweek.org/policy-politics/map-where-critical-race-theory-is-under-attack/2021/06>.



standardized test scores and other data persist for students of certain racial backgrounds.<sup>14</sup> In the wake of the twin crises of the COVID-19 pandemic and the murder of George Floyd, BIPOC students deserve an educational environment that affirms their identities, protects their physical and socioemotional well-being, and prepares them for a successful and joyful future. Now is as good of a time as ever to explore possibilities for education reform, particularly as it relates to racial and economic inequities.

This is the purpose of this paper, which is divided into three chapters. Each chapter is driven by the research questions: Why do racial and economic inequities persist in the US educational system? What should be done to address these inequities? This paper finds that current education reforms have not adequately addressed the root causes of inequality. There are reforms within the field of education that are worth exploring, and transformative public policy in other areas of society, including housing and mass incarceration, is also needed to produce meaningful change for BIPOC students and students in poverty.

Before detailing the contents of the paper, it is worth noting that while race is discussed more explicitly throughout the paper than economic inequality, both issues are included in the overarching topic because they are inextricably linked. White households have higher average incomes than African-American, Latinx, and indigenous households, as well as recent immigrant Asian households. Disparities in familial income and wealth are caused by a complex web of historical oppression and present-day inequities.<sup>15</sup> Additionally, discussions about racial disparities in education often incite discussion about gaps in school funding and community

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<sup>14</sup> Stephen Sawchuk, “4 Ways George Floyd’s Murder Has Changed How We Talk About Race and Education,” Education Week, Editorial Projects in Education, Inc., April 21, 2021, <https://www.edweek.org/leadership/4-ways-george-floyds-murder-has-changed-how-we-talk-about-race-and-education/2021/04>.

<sup>15</sup> Raj Chetty et al., “Race and Economic Opportunity in the United States: an Intergenerational Perspective,” *The Quarterly Journal of Economics* 135, no. 2 (May 2020): 711-718.

resources. Thus, it is not possible to discuss racial inequities in education without concurrently acknowledging economic inequities.

Chapter 1 is a historiography, or an analysis of how historians and other scholars discuss a particular historical topic. The field of historiography acknowledges that scholars write history based on their unique perspective and bias, which shapes their work. Additionally, historians' understanding of a topic may evolve over time as more information becomes available and societal norms and values change.

A historiography of the 50th anniversary of *Brown v. Board of Education* (1954) was conducted. It assesses how scholars discussed the Supreme Court case's significance and legacy around the year 2004. There is also a section providing an update on the literature in the year 2014, the 60th anniversary of the Supreme Court case. The purpose of including this as the first thesis chapter is to contextualize the issue of racial and economic inequities in education. *Brown v. Board* is a milestone case that set the tone for the way these issues are still addressed today.

The historiography reveals that scholars largely agree that gaps between white and African-American students exist in schools, including standardized test scores and levels of school funding. They also acknowledge that many schools are still racially segregated, particularly because of the relationship between student populations and surrounding housing, as well as the efforts of some wealthy white families to avoid placing their children in racially-diverse school settings. Scholars are less unanimous on *Brown v. Board's* impact on racial justice as a whole. While some historians celebrate the case as a milestone in the country's path towards equality, there is a growing chorus who argues *Brown v. Board* was limited in its impact. Their work suggests putting the case on a pedestal distracts from the efforts of those who still advocate for racial progress. While scholars may disagree on the precise legacy of *Brown v. Board*, it is

apparent that massive racial inequities still exist in the education system and other areas of society.

Chapter 2 is an analysis of charter schools, a controversial type of school that has existed in the US for nearly 30 years. Charter schools, which receive funding through public and private sources but are privately operated, enjoy some bipartisan support as a remedy to shortcomings in the public education system. At their core, charter schools are an example of neoliberal education reform. Republicans who support charter schools argue that by increasing competition with public schools, they offer innovation, efficiency, and stronger student outcomes. Democrats who support charter schools may also support them for these reasons. Additionally, African-American and Latinx supporters in urban areas tend to cite the promise of a more rigorous, college-preparatory environment, as well as the opportunity for students to escape failing public schools. A survey of the literature on charter schools suggests that charter schools tend to have similar or slightly better student outcomes in urban cities, and similar or slightly worse student outcomes in suburban and rural areas. Critics argue that charter schools are not a long-term solution for education reform because they lack accountability and filter out BIPOC students, students in poverty, and students with disabilities to artificially increase standardized test scores and graduation rates.

The purpose of this chapter is not to make an authoritative claim on charter school effectiveness; that is too great a task for one paper. Instead, the chapter focuses on who supports charter schools on the state level and which stakeholders are included in any successes. It examines two states known for their significant numbers of charter schools: Louisiana (with an emphasis on New Orleans) and Arizona. In both states, charter school construction was fueled by Republicans in state legislatures, despite the guise of bipartisan support. During their initial

development, there was modest support for charter schools from African-Americans in New Orleans and significant support from Latinx people in Arizona. However, these schools have not provided significantly better outcomes for BIPOC students.

Like charter schools, school funding is a controversial topic in US education. This is the topic of Chapter 3. Depending on the state and the socioeconomic background of their students, public school districts tend to receive 40 to 50% of their funding from local government (particularly property taxes), 40 to 50% of funding from the state government, and about 10% from the federal government. Federalist principles and the absence of education policy in the US Constitution are the primary reason why a relatively small amount of education funding is from the federal government.

Critics of the existing school funding structure argue that students in poverty, including a disproportionate number of BIPOC students, should not attend lower-funded schools merely because they themselves are poor. The literature on school funding's salience is mixed, but it leans toward that funding does matter, depending on how much additional funding is provided and how it is spent. Federal and state court cases have created a complex web of redistributive funding mandates. Generally, it is up to each state government to decide how much additional funding they want to provide low-income schools in their state.

The first part of the chapter features the case study of New York, which has the highest per-pupil school funding in the country. Despite this, there are still significant gaps in student outcomes for BIPOC students and students in poverty, especially in New York City. A series of state court cases in the 1990s and early 2000s established that students were legally entitled to a “sound basic education,” which required higher levels of state funding. However, this has largely

remained an unfunded mandate, as New York cut education funding during the recession and hasn't made up for the lack of funding in the years since.

Several recent studies suggest increased school funding has made a significant difference in graduation rates and standardized test scores for NYC students. NYC will receive several billion dollars from the federal COVID-19 stimulus package enacted in March 2021. Hopefully this funding will be used to support students who already faced inherent setbacks before the pandemic.

While assessing school funding, both in New York and nationwide, it is impossible to ignore that deeper societal inequalities arguably have a greater impact on student outcomes than minor changes in school funding. The second part of this chapter explores mass incarceration's role on student outcomes and finds this is the more important "school funding" debate. First, African-American students disproportionately face racial discrimination in the juvenile justice system and in school disciplinary policies. This is broadly known as the "school-to-prison pipeline." Second, children of incarcerated parents face adverse educational and behavioral outcomes. This provides support for why funding should be reallocated from the criminal justice system to schools.

After these three chapters, there is a concluding section. The conclusion will discuss limitations of the research and provide policy recommendations for education reform. This includes stronger regulations on charter schools, policies that would reduce inequities in school funding, and a call for a philosophical shift on how educational inequities are discussed and legislated.

# Chapter 1

## A Historiography of *Brown v. Board of Education*

On May 17, 1954, the Supreme Court ruled in *Brown v. Board of Education of Topeka* that the “separate but equal” standard established by *Plessy v. Ferguson* (1898) was unconstitutional. The plaintiffs, represented by Thurgood Marshall and the NAACP Legal Defense and Educational Fund, referenced the dilapidated physical conditions of schools with African-American students, a lack of financial resources, and disparities in class sizes and course offerings.<sup>16</sup> They also pointed to psychological research by Kenneth and Mamie Clark that demonstrated segregated schools made African-American students feel a sense of racial inferiority.<sup>17</sup>

The Supreme Court unanimously ruled that school segregation violated the Fourteenth Amendment of the Constitution.<sup>18</sup> A year later, the Court specified how school integration would be enforced. The NAACP lobbied for immediate, sweeping integration, but in a statement known as *Brown v. Board II*, the justices asked lower courts and school districts to make their best judgement on how to proceed. The Court expected pushback, so they requested that schools be integrated gradually, or with “all deliberate speed.”<sup>19</sup>

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<sup>16</sup> Wanda J. Blanchett, Vincent Mumford, and Floyd Beachum, “Urban School Failure and Disproportionality in a Post-Brown Era: Benign Neglect of the Constitutional Rights of Students of Color,” *Remedial and Special Education* 26, no. 2 (March/April 2005): 70-71 and James T. Patterson, *Brown v. Board of Education: A Civil Rights Milestone and its Troubled Legacy* (New York: Oxford University Press, 2001), 25.

<sup>17</sup> Blanchett, Mumford, and Floyd, “Urban School Failure and Disproportionality in a Post-Brown Era,” 66-67.

<sup>18</sup> *Ibid.*, 70.

<sup>19</sup> Derrick Bell, *Silent Covenants: Brown v. Board of Education and the Unfulfilled Hopes for Racial Reform* (New York: Oxford University Press, 2004), 18.

*Brown v. Board* is widely considered to be the most consequential Supreme Court decision of the 20th century.<sup>20</sup> Around the year 2004, 50 years after the first *Brown v. Board* decision, a wealth of books and academic articles were written on the decision.<sup>21</sup> Scholars reassessed how the Supreme Court, comprised of nine white men with a variety of judicial philosophies, arrived at their unanimous decision. Scholars also considered the trajectories of educational equity and racial justice in the 50 years since 1954, as well as how to proceed on these issues.

In American culture, anniversaries are often used to memorialize past events and reflect on what lies ahead.<sup>22</sup> For historians, anniversaries are sometimes an opportunity to blindly celebrate the past by perpetuating dominant, nostalgic narratives and diminishing already-marginalized perspectives. The abundance of 50th anniversary-themed scholarship on *Brown v. Board* gives necessary insight into the legacy of the landmark Supreme Court decision, particularly its influence on educational inequities and racial justice as a whole. Additionally, a historiographical analysis of this literature raises the question of whether scholars were willing to be critical of the case that has been lauded as “the finest hour of American law” and “the Holy Grail of racial justice.”<sup>23</sup>

After analyzing the content of these sources, three historiographical questions emerge, forming the three body sections of this paper. Those questions are:

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<sup>20</sup> Sabrina Zirkel, “Ongoing Issues of Racial and Ethnic Stigma in Education 50 Years after *Brown v. Board*,” *The Urban Review* 37 no. 2 (June 2005): 107.

<sup>21</sup> Sources were included if they explicitly reference the 50th anniversary of *Brown v. Board* in their title, book jacket, preface/introduction, and/or as part of a central argument of the book. Many, but not all, of the sources were published in 2004.

<sup>22</sup> Michael Olmert, “Anniversaries and the Origin of History,” *The Colonial Williamsburg Journal* (Spring 2007), accessed July 31, 2019, <https://www.history.org/foundation/journal/spring07/anniversary.cfm>.

<sup>23</sup> Bell, “Silent Covenants,” 2-3.

1. How do scholars believe the Supreme Court came to its decision on *Brown v. Board*?
2. How do scholars describe the legacy of *Brown v. Board* on educational equity?
3. How do scholars describe the impact of *Brown v. Board* on the civil rights movement and its legacy on racial justice?

Scholars who wrote about *Brown v. Board* around the time of its 50th anniversary cite a confluence of factors for how the justices reached a unanimous decision. While they do not agree on the exact causes, they universally believe the “all deliberate speed” mandate was an intentionally cautious edict. There is general agreement that vast educational inequities still exist today between white and African-American students. There is less agreement on the extent to which *Brown v. Board* contributed to the civil rights movement and racial justice on a broader scale. Some scholars are relevant to more than one historiographical question, so they will be referenced in each corresponding section.

After these three research questions are answered, a short section will follow that summarizes a few articles written around the 60th anniversary of *Brown v. Board* in 2014. These sources suggest that scholars have become more critical of *Brown v. Board*'s legacy in the decade since the monumental anniversary.

**Question 1: How do scholars believe the Supreme Court came to its decision on *Brown v. Board*?**

Overturing *Plessy v. Ferguson* was no small feat. “Separate but equal” legally sanctioned Jim Crow laws in the South. Instead of continuing to interpret the Fourteenth Amendment as it was



intended by its framers, who did not desire to ban segregation nationwide, the Supreme Court interpreted the amendment using contemporary circumstances and social norms.<sup>24</sup>

The conventional wisdom on the Court's unanimous decision glosses over the individual views of each of the nine justices. It also assumes the justices were easily convinced and that overturning *Plessy v. Ferguson* was inevitable.<sup>25</sup> A few scholars attempted to unearth why the justices made this decision. In addition to correcting the historical record, they sought to explain why the justices utilized the incremental "all deliberate speed" approach instead of instilling a sweeping federal mandate.

A good starting point is the book *Politically Considered: 50th Commemoration of the Supreme Court Decision of 1954* by Mahmoud El-Kati. As the title suggests, El-Kati's thesis is that *Brown v. Board* was "inspired by neither Christian love nor humane values, but by unavoidable political reality."<sup>26</sup> This political reality was the Cold War. El-Kati argues the US was concerned about the blight of Jim Crow in its battle with the Soviet Union for global moral authority, so it was time to acknowledge African-Americans' discontent with segregation.<sup>27</sup>

A retired professor of African-American studies at Macalester College in Saint Paul, Minnesota, El-Kati is a well-respected scholar-activist in his community.<sup>28</sup> Like his other books, *Politically Considered* is written for a lay audience and lacks the depth of the works of his contemporaries. El-Kati does not specify which justices were moved by the Cold War issue, so the reader is led to believe the Court made their decision as a single unit. El-Kati fails to include

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<sup>24</sup> Michael J. Klarman, "Brown v. Board of Education: Law or Politics?," *University of Virginia School of Law Public Law and Legal Theory Research Paper Series* no. 2-11 (December 2002): 4-5.

<sup>25</sup> *Ibid.*, 5.

<sup>26</sup> Mahmoud El-Kati, *Politically Considered: 50th Commemoration of the Supreme Court Decision of 1954* (Minneapolis: Papyrus Publishing Inc., 2004), 22.

<sup>27</sup> *Ibid.*, 23 and 29.

<sup>28</sup> Lisa Steinmann, "MN Voices: Mahmoud El-Kati's half century as educator and activist in the Twin Cities," *Twin Cities Daily Planet*, April 19, 2012, accessed August 15, 2019, <https://www.tcdailyplanet.net/mn-voices-mahmoud-el-khati>.

any footnotes, merely listing a few books that he read for inspiration. One of these books is *Silent Covenants: Brown v. Board of Education and the Unfulfilled Hopes for Racial Reform* by Derrick Bell.

Bell litigated school segregation cases with the NAACP in the 1960s before becoming a professor at the NYU School of Law and later Harvard Law School. In *Silent Covenants*, he offers a thorough analysis of the Cold War as a previously “unacknowledged motivation” of the Court’s decision.<sup>29</sup> He describes international media reports of lynchings in the South and public criticisms delivered by prominent African-American scholars and activists. Both made the US government look hypocritical when it claimed to be more democratic than the Soviet Union.<sup>30</sup>

Bell further explains that during oral arguments, the NAACP included an appeal to the US government’s vested interest in addressing racial inequality. This was seconded in an *amicus curiae* brief from the Department of Justice. Bell finds that Justices Earl Warren and William Douglas were particularly moved by this argument, and in a previous McCarthy-era Supreme Court case, Justice Felix Frankfurter hinted at a concern over the US government’s racist image abroad.<sup>31</sup>

Complementing Bell’s account of the influence of the Cold War on the Supreme Court is Michael J. Klarman’s article “*Brown v. Board of Education*: Law or Politics?” Klarman’s description of Justices Harold Burton and Sherman Minton as “fierce Cold Warriors” suggests over half of the Court was persuaded at least in part by the anti-communist public relations concern.<sup>32</sup> But unlike Bell, Klarman goes beyond the Cold War argument to explain why the Court made this decision. He posits that after Chief Justice Fred Vinson and the other eight

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<sup>29</sup> Bell, “Silent Covenants,” 67.

<sup>30</sup> Ibid., 60-64.

<sup>31</sup> Ibid., 60 and 65-66.

<sup>32</sup> Klarman, “Brown v. Board of Education: Law or Politics?,” 13-14.

justices first heard oral arguments in 1952, they were likely split 4 votes for overturning *Plessy v. Ferguson*, 2 votes against (including Vinson), and 3 votes undecided but leaning toward maintaining school segregation.<sup>33</sup> Vinson suddenly died of a heart attack a year later; he was replaced by Warren and the Court heard oral arguments for a second time. Opposed to *Plessy v. Ferguson* himself, Warren already had five votes for overturning it, but he wanted the Court to be unanimous and deliver a strong mandate in the face of predicted Southern opposition. Klarman argues that Justices Frankfurter, Robert Jackson, and Stanley Reed did not believe in the legal reasoning of the case, but they ultimately supported overturning *Plessy v. Ferguson* because of personal convictions against segregation and to support a message of unanimity to the South. This suggests Warren played a role in making the Court unanimous, but there were other issues that contributed to the reversal of some justices' positions.<sup>34</sup>

Klarman, currently a professor at Harvard Law School, is a renowned legal historian. In this article, he draws on extensive conference notes and correspondences between the justices to determine their views. This makes for an impressive works cited list, exceeding that of Bell, who predominately cites Mary L. Dudziak's book *Cold War Civil Rights: Race and the Image of American Democracy* (which Klarman cites as well).<sup>35</sup> Klarman acknowledges the notes he cites are not direct transcriptions or quotations, though he states "they appear quite accurate."<sup>36</sup> Overall, Klarman's use of primary sources gives him a unique glimpse into the minds of the justices.

While Klarman makes a helpful addition to Bell's Cold War argument and he provides the most detailed description of each justice's views, additional analysis can be found in James

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<sup>33</sup> Ibid., 15-16.

<sup>34</sup> Ibid., 17-23.

<sup>35</sup> Bell, "Silent Covenants," 60 and 66.

<sup>36</sup> Klarman, "Brown v. Board of Education: Law or Politics?," 33.

T. Patterson's book *Brown v. Board of Education: A Civil Rights Milestone and its Troubled Legacy*. Patterson, a former history professor at Brown University, confirms Klarman's point that Justices Jackson, Frankfurter, and Reed were holdouts who ceded their jurisprudence-related concerns for other considerations.<sup>37</sup> Moreover, Patterson makes a general argument that the *Brown v. Board* ruling was designed to appease racial justice advocates. He quotes former NAACP lawyer Julius Chambers, who said the decision "gave blacks enough legal crumbs to satisfy them for a time, while the rest of America continued its feast."<sup>38</sup> Patterson argues a two-part compromise was essential for the more skeptical justices to join the majority. First, the decision only struck down *de jure* segregation in schools, leaving it intact in other public settings. Second, the Court gave the South a year to sit with the decision before moving integration into motion with *Brown v. Board II*.<sup>39</sup>

Together, these sources comprise a nuanced dialogue on the causes of the Supreme Court's unanimous *Brown v. Board* decision. Scholars may disagree on which factors were more salient, but they agree the Court was not "unanimous" when it came to concerns over racial injustice in the country at the time. This helps explain why they were not prepared or interested in swiftly mandating and enforcing integration. This interpretation becomes relevant in the next two sections, which reveal that while the US has achieved great strides in the areas of educational inequity and racial justice since *Brown v. Board*, significant inequalities persist.

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<sup>37</sup> Patterson, 55-56.

<sup>38</sup> *Ibid.*, xxvi.

<sup>39</sup> *Ibid.*, 65.

**Question 2: How do scholars describe the legacy of *Brown v. Board* on educational equity?**

School integration faced considerable opposition after *Brown v. Board*. School districts integrated at widely different paces, and many Southern states refused to integrate at all. Comprehensive civil rights legislation signed into law 10 years after *Brown v. Board* gave desegregation a bigger push, but schools were still integrating well into the 1970s.<sup>40</sup>

Fifty years after *Brown v. Board*, scholars from a variety of disciplines analyzed the impact of the decision on the US education system. They assessed whether schools were fully integrated and whether the achievement gap between white and African-American students was substantially narrowed. Scholars largely answer in the negative on both issues, and they offer a variety of solutions.

Patterson provides a brief overview of current educational issues toward the end of his book. He posits that schools steadily integrated in the 1970s and 1980s but began losing steam in the 1990s. After summarizing several court decisions that relaxed federal enforcement of integration, as well as lawsuits that challenged busing and affirmative action, Patterson concludes that schools in urban areas are resegregating and lack the financial resources of their suburban, disproportionately white counterparts.<sup>41</sup>

Patterson briefly touches on gaps in standardized test scores between white and African-American students. He proposes possible causes for these gaps, ranging from racial bias in the tests to financial inequities in predominately black schools. However, Patterson does not state whether he believes *Brown v. Board* is complicit in this inequality. He merely observes that the

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<sup>40</sup> David Brian Robertson, *Federalism and the Making of America* (New York: Routledge, 2012), 69-70.

<sup>41</sup> Patterson, 211-214.

hope that *Brown v. Board* would eliminate gaps between white and black students has not been realized.<sup>42</sup>

Lenneal J. Henderson, Jr., a professor of government at the University of Baltimore, also discusses *Brown v. Board*-adjacent education policy issues in the article “*Brown v. Board of Education* at 50: The Multiple Legacies for Policy and Administration.” This includes a brief outline of school funding redistribution, affirmative action, and other contemporary debates at the intersection of race and education. Written as a public policy-focused introduction to *Brown v. Board*, Henderson’s article lacks the depth of Patterson’s book. However, one noteworthy addition is a reference to No Child Left Behind (NCLB). Henderson suggests the law follows in the footsteps of *Brown v. Board* as a federal attempt to remedy racial inequities in schools, though he exercises caution on the degree to which it will be successful in achieving its goals.<sup>43</sup>

Written in 2001, Patterson’s book was published one year before NCLB was signed into law by a bipartisan Congress and President George W. Bush. NCLB acknowledged the existence of the racial achievement gap but also emphasized standardized tests as a means of measuring student performance.<sup>44</sup> In his article “*Brown v. Board of Education* and the No Child Left Behind Act: Competing Ideologies,” then-Brigham Young University law student Dan J. Nichols uses the 50th anniversary of *Brown v. Board* as an opportunity to compare *Brown v. Board*’s and NCLB’s visions for education equity. Taking an even stronger stance than Henderson, Nichols is skeptical of whether NCLB will result in meaningful reform. He argues NCLB is a return to “separate but equal,” as it emphasizes high-stakes tests and increased teacher accountability for

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<sup>42</sup> Ibid., 214-218.

<sup>43</sup> Lenneal J. Henderson, Jr., “*Brown v. Board of Education* at 50: The Multiple Legacies for Policy and Administration,” *Public Administration Review* 64 no. 3 (May/June 2004): 270-272.

<sup>44</sup> Dan J. Nichols, “*Brown v. Board of Education* and the No Child Left Behind Act: Competing Ideologies,” *Brigham Young University Education & Law Journal* 2005 no. 1 (2005): 151-153.

all schools regardless of their racial composition. With no mention of integration, NCLB assumes these measures will lessen the racial achievement gap on their own.<sup>45</sup>

Nichols' article is thought-provoking but surface-level and largely theoretical. It is hindered by the fact that it was written before NCLB's impact on the racial achievement gap could be accurately assessed. Amid a variety of controversies, NCLB was replaced with the Every Student Succeeds Act (ESSA) in 2015. Like NCLB, ESSA has been critiqued for its lack of focus on the racial achievement gap.<sup>46</sup> A rigorous assessment of the relationship between school segregation, test scores, and overall academic achievement is needed to build on Patterson, Henderson and Nichols' preliminary thoughts.

Charles T. Clotfelter's book *After Brown: The Rise and Retreat of School Desegregation* is an "arithmetical history" of school segregation in the 50 years after *Brown v. Board*.<sup>47</sup> A professor of public policy and economics at Duke University, Clotfelter takes a quantitative approach to measuring the decision's impact on educational equity. He tracks changes in "interracial contact in schools," arguing this is an accurate predictor of positive educational outcomes for African-American students.<sup>48</sup> Using demographic data, school district records, and survey results that span several decades, Clotfelter concludes interracial contact in schools has increased since *Brown v. Board*. However, many white families have resisted integration by moving to suburbs, enrolling in private schools, and placing white students in "tracking" programs within public schools based on standardized test scores and other supposedly

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<sup>45</sup> Ibid., 170-172 and 177.

<sup>46</sup> Laura Adler-Greene, "Every Student Succeeds Act: Are Schools Making Sure Every Student Succeeds?," *Touro Law Review* 35 no. 1 (2019): 11-12.

<sup>47</sup> Charles T. Clotfelter, *After Brown: The Rise and Retreat of School Desegregation* (Princeton: Princeton University Press, 2004), xv.

<sup>48</sup> Ibid., xv and 186-194.

“objective” criteria. These avenues have been devised by local and state education officials and lawmakers.<sup>49</sup>

Clotfelter’s impressive use of primary sources to measure the nuances of school integration throughout the US is a useful empirical addition to discourse on *Brown v. Board* and educational equity. He makes a compelling case that since courts have stopped forcing school districts to integrate, the fate of *Brown v. Board*’s promise principally lies with state governments, school districts, and white families who possess the resources to limit their children’s interactions with black students. He urges state and local officials to take a more active role in integrating student populations.<sup>50</sup>

More policy solutions can be found in the works of education scholars. Wanda Blanchett, Vincent Mumford, and Floyd Beachum discuss the state of urban education and special education in their article “Urban School Failure and Disproportionality in a Post-Brown Era: Benign Neglect of the Constitutional Rights of Students of Color.” The authors posit that a lack of federal enforcement of *Brown v. Board* paved the way for resegregation in urban schools. They point to school districts and local politicians who did not prioritize desegregation, allowed open enrollment across districts, and rezoned districts along racial lines. The authors also find that schools with predominately African-American students have less funding, fewer quality teachers, and fewer resources for special education students.<sup>51</sup>

The authors credit *Brown v. Board* with paving the way for legislation that ensured students with disabilities were taught in mainstream, “least restrictive environment” settings. In a departure from Clotfelter, they argue school integration is not enough to achieve significant

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<sup>49</sup> Ibid., 180-183.

<sup>50</sup> Ibid., 44-74 and 196-200.

<sup>51</sup> Blanchett, Mumford, and Beachum, 71-73.



progress in African-American students' educational achievement, especially African-American students with disabilities. The authors provide several policy proposals that would guarantee federal enforcement from all three branches.<sup>52</sup> These proposals demonstrate the authors seized the opportunity of the 50th anniversary to build on *Brown v. Board* with an even grander vision.

In her article "Ongoing Issues of Racial and Ethnic Stigma in Education 50 Years after *Brown v. Board*," education professor Sabrina Zirkel takes a similar solutions-oriented approach. She focuses on the legacy of Kenneth and Mamie Clark's research on racial inferiority that was cited by the plaintiffs in *Brown v. Board*. Zirkel argues racial stigma still affects African-Americans' academic achievement and career trajectories, as ending *de jure* segregation in schools was not enough to create truly diverse and equitable classrooms.<sup>53</sup>

Zirkel offers several specific suggestions for teachers. She recommends white teachers be more in tune with their implicit biases toward black students, as white teachers are more likely to be critical of black students than white students. She also suggests teachers employ culturally-relevant curriculum and intentionally foster relationships between students across racial divides.<sup>54</sup> This represents an application of Clotfelter's argument for interracial contact, but on a micro level – in individual classrooms. Additionally, Clotfelter, Blanchett et al. and Zirkel all provide considerable empirical backing for their proposed solutions. Their articles are useful for academics and educators who are committed to *Brown v. Board*'s promise of education equity.

Several sources assessing the legacy of *Brown v. Board* on educational equity feature personal narratives. For example, higher education professional William B. Harvey and his daughter, sociologist Adia M. Harvey, jointly wrote the article "A Bi-generational Narrative On

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<sup>52</sup> Ibid., 73-79.

<sup>53</sup> Zirkel, 108-111.

<sup>54</sup> Ibid., 114-118.

The Brown Vs Board Decision.” William describes attending a segregated elementary school in North Carolina several years after *Brown v. Board*. He felt a sense of shame when he observed nearby white schools he was not allowed to attend. William is thankful his daughter could attend an integrated school in North Carolina, but he points out many schools are still segregated.<sup>55</sup>

Adia argues that once integration began, black students went from being taught by largely supportive black teachers to being subjected to racist or apathetic white teachers. Adia describes her own experience in the 1980s and 1990s in North Carolina, when she was often the only black student in her classes. Adia had racist interactions with her teachers and was often tokenized in class discussions. Adia also discusses the “oppositional culture” and distrust of schools that Zirkel argues is the current manifestation of the Clarks’ concept of racial inferiority.<sup>56</sup>

While this article lacks the empirical support found in Clotfelter, Blanchet et al., and Zirkel’s works, “A Bi-generational Narrative On The Brown Vs Board Decision” humanizes the deep impact of segregation on African-Americans’ experiences in schools throughout several generations. The authors passionately and persuasively argue that educational inequities were not significantly addressed by *Brown v. Board*.

The documentary “Little Rock Central: 50 Years Later” is a necessary update to Adia Harvey’s personal account. This documentary was directed, produced, and filmed by brothers Craig and Brent Renaud. Craig is an alum of Central High School in Little Rock, Arkansas.<sup>57</sup> The filmmakers explore the degree to which the school has changed since nine African-American students infamously attempted to integrate three years after *Brown v. Board*. Despite

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<sup>55</sup> Adia M. Harvey and William B. Harvey. “A Bi-generational Narrative On The Brown Vs Board Decision,” *The Negro Educational Review* 56, no. 1 (January 2005): 43-46.

<sup>56</sup> *Ibid.*, 46-48.

<sup>57</sup> “Fifty Years Since Little Rock Nine, New HBO Documentary Tells the Story of a Defining Civil Rights Struggle,” *Democracy Now*, September 20, 2007, accessed August 2, 2019, [https://www.democracynow.org/2007/9/20/fifty\\_years\\_since\\_little\\_rock\\_nine](https://www.democracynow.org/2007/9/20/fifty_years_since_little_rock_nine).

their personal connection, the directors do not insert themselves in the film. They alternate between interviews with students, teachers, and the principal at Central High School, as well as statements from community members and occasional archival footage. Minnijean Brown-Trickey, one of the Little Rock Nine, is also featured. She visits the school at the beginning and end of the film to commemorate the anniversary of the first time she stepped foot in the school.<sup>58</sup>

After spending several months in the school, the filmmakers reveal that Central High School is essentially two schools in one. Racial divisions are apparent in the cafeteria, other social settings, and in Advanced Placement classes, which are populated almost entirely by white students. Conversely, African-American students are disproportionately placed in remedial classes. Candid interviews reveal that stereotypes and distrust persist between white and black students and teachers.<sup>59</sup>

This documentary anecdotally confirms Clotfelter's description of tracking as a means of segregating students within a school. It also calls into question whether Clotfelter and Zirkel's vision for increasing racial contact is feasible. Brown-Trickey's impassioned speech at the end of the film classroom echoes this concern. She chastises a class of students in which one side of the room is comprised of all white students, and the other half all African-American students – not by law but based on personal preference and comfort, the students say. Overall, this documentary is a powerful critique of *Brown v. Board*'s legacy, and it is an essential companion to written works on the subject.

Mary Hatwood Futrell's essay "The Impact of the *Brown* Decision on African American Educators" gives attention to a forgotten casualty of *Brown v. Board*: African-American teachers in segregated schools. Hatwood Futrell includes a narrative from Merrill Ross, a black principal

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<sup>58</sup> *Little Rock Central: 50 Years Later*, Brent Renaud and Craig Renaud, New York City: Home Box Office, 2007.

<sup>59</sup> Ibid.

who witnessed several black teachers struggle to get jobs at integrated schools. If they did get a job, they faced racism from white teachers. Ross faced similar treatment from white colleagues.<sup>60</sup> Hatwood Futrell supports this primary source with empirical examples of challenges black teachers faced as they were transferred to integrated schools. This included being forced to assume lower-paid roles as coaches or librarians instead of as teachers, and being fired as a form of reprimand if they joined the NAACP or a teachers' union. Even worse, many black teachers were fired without cause immediately after arriving at integrated schools.<sup>61</sup>

Along with Adia Harvey's account, this article shines a much-needed light on the black teachers who were largely left behind by integration. As Zirkel points out, black students are less likely to trust white teachers than black teachers, and white teachers are more likely to have positive interactions with white students than black students.<sup>62</sup> Further discussion is needed on how to increase the number of black teachers to make up for this negative aspect of *Brown v. Board*'s legacy.

### **Question 3: How do scholars describe the impact of *Brown v. Board* on the civil rights movement and its legacy on racial justice?**

Though *Brown v. Board* only addressed segregation in public schools, it is widely credited as the impetus for the civil rights movement.<sup>63</sup> When commemorating the anniversary of *Brown v. Board*, many scholars discussed the arc of racial justice over the past 50 years. While they generally agree *Brown v. Board* was never going to be the sole cure for the nation's racial woes,

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<sup>60</sup> Mary Hatwood Futrell, "The Impact of the *Brown* Decision on African American Educators," in *The Unfinished Agenda of Brown v. Board of Education*, eds. William E. Cox and Frank L. Matthews (Hoboken: John Wiley & Sons, Inc., 2004), 80-84.

<sup>61</sup> *Ibid.*, 85-88.

<sup>62</sup> Zirkel, 113-114.

<sup>63</sup> Clotfelter, 6.

they disagree on its precise impact and whether it should be looked at as a beacon of inspiration today. This third historiographical question is where there is the most disagreement between scholars.

Beginning with housing segregation, Patterson argues there is a relationship between segregated neighborhoods and segregated schools. On average, African-Americans continue to live in poorer neighborhoods and attend less-resourced schools, as schools are largely funded by local property taxes.<sup>64</sup> Patterson also briefly mentions welfare and criminal justice reform as racial justice policy areas worth addressing. However, he largely concludes that African-Americans are better off 50 years after *Brown v. Board*.<sup>65</sup> In one peculiar passage, Patterson chides “separatist nostalgia” as “simply fatuous,” arguing that integration has been largely successful and has delivered on its promised benefits.<sup>66</sup>

An even more optimistic stance is taken by young adult author Diane Telgen in her book *Defining Moments: Brown v. Board of Education*. This book is part of Omnigraphics’s *Defining Moments* series, which focuses on major events of US history for secondary school students.<sup>67</sup> Overall, the book provides a helpful overview of *Brown v. Board*’s background for younger readers. However, it concludes rather optimistically that the decision “changed the social and cultural landscape of the United States decisively and irrevocably” and was “a giant stride forward” in achieving racial justice.<sup>68</sup>

Patterson and Telgen’s positive view of *Brown v. Board* differs from the critical views of several African-American scholars. Bell decries the decision as a “failure” and “irrelevant” to the

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<sup>64</sup> Patterson, 218-220.

<sup>65</sup> Ibid., 222-223.

<sup>66</sup> Ibid., 194.

<sup>67</sup> “Defining Moments: History Resources for Today’s Students,” *Omnigraphics*, accessed August 15, 2019, <https://omnigraphics.com/shop/category/defining-moments/#description>. While this book was written for a series that spans several years, it explicitly notes the 50th anniversary of *Brown v. Board*.

<sup>68</sup> Diane Telgen, *Defining Moments: Brown v. Board of Education* (Detroit: Omnigraphics, 2005), 112-113.

hardships that African-Americans still face, including poverty, mass unemployment, illiteracy, and disparities in the criminal justice system. Summarizing interviews with wealthy, prominent African-Americans in business and government, Bell points out even they still face discrimination daily.<sup>69</sup> Considering Bell fought school segregation with the NAACP in the 1960s, arriving at this conclusion must have been particularly harrowing.

Bell's pessimism is echoed in his contribution to *What "Brown v. Board of Education" Should Have Said: The Nation's Top Legal Experts Rewrite America's Landmark Civil Rights Decision*, edited by Yale Law School professor Jack M. Balkin. This counterfactual work is afflicted with presentism; an analysis of *Brown v. Board* from these legal scholars would have been more useful than rewriting a Supreme Court decision with today's hindsight. However, Bell's lone dissent offers an interesting companion to his work *Silent Covenants*, as he passionately argues no single Supreme Court case can overhaul a system of oppression by itself, no matter how carefully it is written.<sup>70</sup>

Like Bell, El-Kati views *Brown v. Board*'s influence on racial justice as essentially nonexistent. He states unequivocally, "No government ever has and never will initiate progressive social change."<sup>71</sup> Instead, throughout his book, El-Kati highlights the work of many African-American activists and scholars, including A. Phillip Randolph, W.E.B. DuBois, and Martin Luther King, Jr., to illustrate that racial justice will only be achieved through the grassroots efforts of tenacious African-American individuals.<sup>72</sup> He quotes Frederick Douglass: "If there is no struggle, there is no progress."<sup>73</sup>

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<sup>69</sup> Bell, "Silent Covenants," 180-185.

<sup>70</sup> Derrick A. Bell, "Derrick A. Bell, dissenting," in *What "Brown v. Board of Education" Should Have Said: The Nation's Top Legal Experts Rewrite America's Landmark Civil Rights Decision* (New York: New York University Press, 2001), 185-200.

<sup>71</sup> El-Kati, 41.

<sup>72</sup> *Ibid.*, 12-13, 20-27, 35-37, and 41.

<sup>73</sup> *Ibid.*, 31.

Part historical work and part memoir, former Harvard Law professor Charles J. Ogletree's discussion of housing policy in *All Deliberate Speed: Reflections on the First Half Century of Brown v. Board of Education* is more detailed than Patterson's. Ogletree details the influence of redlining and "white flight" on housing segregation, neither of which courts have remedied. Not surprisingly, Ogletree is less optimistic than Patterson that structural inequality in housing can be quickly remedied.<sup>74</sup> And like El-Kati, Ogletree puts more faith in African-American grassroots efforts than the federal government.<sup>75</sup> He argues African-American community leaders should facilitate after-school activities and mentor African-American urban youth. He gives an example of a former law student of his who started such a program.<sup>76</sup>

Ogletree also argues for reparations. At the time the book was written, Ogletree represented reparations claimants who lived through the infamous racist violence in Tulsa, Oklahoma in 1921.<sup>77</sup> Ogletree's view on reparations was inspired by relationships he made with radical black activists throughout his career.<sup>78</sup> He convincingly argues such sweeping federal policy is needed to make up for the lack of federal enforcement of *Brown v. Board* and the subsequent cases that allowed institutional racism to persist.

Not all African-American scholars are as critical as Bell, El-Kati and Ogletree. Danielle S. Allen, a political scientist at Harvard University, is cautiously optimistic in her book *Talking to Strangers: Anxieties of Citizenship since Brown v. Board of Education*. Allen centers excerpts from political philosophers and pictures of the Little Rock Nine and segregationist protestors in this text. These sources are offered as evidence that Americans need to enter a new era of

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<sup>74</sup> Charles J. Ogletree, *All Deliberate Speed: Reflections on the First Half Century of Brown v. Board of Education* (New York: W.W. Norton & Company, 2004), 261-264.

<sup>75</sup> *Ibid.*, 273.

<sup>76</sup> *Ibid.*, 269-272.

<sup>77</sup> *Ibid.*, 284-291.

<sup>78</sup> *Ibid.*, 280-293.

“political friendship” and reach across racial divides to maintain a democratic society.<sup>79</sup> Missing in Allen’s book is an analysis of whether this can be realistically achieved, though her moving prose is a worthwhile contribution to those who hope for a more equitable future.

Robert L. Carter, who assisted Thurgood Marshall during the *Brown v. Board* litigation, is similarly hopeful. His article “The Long Road to Equality” is a reflection on his experience with the Supreme Court case. He concludes with an acknowledgement the country is far from achieving racial justice, but he describes *Brown v. Board* as a “foundation for activists and scholars committed to fulfilling” that goal.<sup>80</sup>

This statement alludes to the conventional wisdom that *Brown v. Board* inspired the civil rights movement. In his book *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality*, Michael J. Klarman rejects this claim. Klarman points out that since the onus of implementing *Brown v. Board* was placed on lower courts and school districts, the NAACP and black parents had to litigate segregation challenges one school at a time. Black families involved in these lawsuits were frequent targets of racist violence and harassment from the Ku Klux Klan members and other white supremacists. Few black families were willing to continually face these threats, so schools were integrated at a remarkably slow rate in the immediate years after *Brown v. Board*.<sup>81</sup>

Klarman makes a compelling argument that *Brown v. Board*’s primary immediate impact was white supremacist backlash, not a marked increase in integration. He argues that increased publicization of racial violence, the demise of the Red Scare - which sometimes associated

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<sup>79</sup> Danielle S. Allen, *Talking to Strangers: Anxieties of Citizenship since Brown v. Board of Education* (Chicago: The University of Chicago Press, 2004), 4, 10-11, 15-16, and 53-98.

<sup>80</sup> Robert L. Carter, “The Long Road to Equality,” *The Nation* 278 no. 17 (May 3, 2004): 30.

<sup>81</sup> Michael J. Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (New York: Oxford University Press, 2004), 351-360 and 368-369.



African-American equality with communism - and African decolonization efforts opened the door and provided inspiration for civil rights activists. Klarman also notes that direct action protestors were not organized until several years after *Brown v. Board*, and ending segregation was not an initial part of their platform.<sup>82</sup> Through his detailed historical arguments and willingness to acknowledge limitations along the way,<sup>83</sup> Klarman builds off his aforementioned article on the Supreme Court justices and presents the most definitive 50th anniversary work on *Brown v. Board*, questioning its practical impact on racial equality.

One scholar who disagreed with Klarman's sweeping take is historian David J. Garrow, who wrote a pair of essays titled "Why Brown Still Matters" and "Give *Brown v. Board of Education* Its Due." These essays comprise a snarky rebuttal to the critical views of Bell, Ogletree, and Klarman. Garrow calls out what he views as the "wrong-headed academic fad" of questioning the legacy of *Brown v. Board*. He describes Bell and Ogletree as "depressingly negative" and claims Klarman's argument on white supremacist backlash is "abstruse" and "erroneous."<sup>84</sup>

Garrow insists that *Brown v. Board* was a landmark moment in the civil rights movement and resulted in significant advancement toward racial equality.<sup>85</sup> He is concerned that a substantial critique of *Brown v. Board* allows opponents of meaningful racial justice to describe the decision as "color-blind" and use it as evidence that racial discrimination is no longer an issue, in the same way Martin Luther King Jr.'s words are often twisted to make the same

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<sup>82</sup> Ibid., 360-377.

<sup>83</sup> After discussing *Brown v. Board*'s indirect effects, Klarman admits on page 364, "Unfortunately, none of these indirect effects can be measured with precision. History is not science; one cannot repeat experiments and control for particular variables. Still, one can make a plausible case that Brown mattered more in some of these ways than others."

<sup>84</sup> David J. Garrow, "Give *Brown v. Board of Education* Its Due," *Human Rights* 31 no. 3 (Summer 2004): 2-4.

<sup>85</sup> Ibid., 5 and David J. Garrow, "Why *Brown* Still Matters," *The Nation* 278 no. 17 (May 3, 2004): 45.

point.<sup>86</sup> Unfortunately, Garrow does not respond to the substance of Bell, Ogletree, and Klarman's arguments. These scholars are not in opposition to racial justice; they argue for deeper historical understanding and atonement of the country's racist past and present. Thus, Garrow is guilty of falling in the commemorative anniversary trap.

### **Addendum: The 60th anniversary of *Brown v. Board***

Around the year 2014, a smaller wave of articles emerged on the subject of *Brown v. Board*'s legacy. Scholars took this opportunity to reassess the legacy of the court case on educational inequities and racial justice. While this account is less comprehensive than the historiography on the 50th anniversary, it suggests that scholars are even more critical of *Brown v. Board* and more explicitly concerned about racial injustice now than they were in the early 2000s.

The Summer 2014 edition of *The Journal of Negro Education* featured a variety of articles on racial inequality in education. Two higher education administrators, James L. Moore III of The Ohio State University and Chance W. Lewis of the University of North Carolina, served as guest editors. They cite a myriad of research and argue that the evidence has become increasingly clear that African-American people are still more likely to live in low-income, racially segregated neighborhoods. Achievement gaps between white students and students of color persist, and there is a relationship between a students' neighborhood and the quality of education they receive. The editors highlight the sober truth that the same issues continue to be discussed in academic literature today as were considered by the Supreme Court in 1954.<sup>87</sup>

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<sup>86</sup> Garrow, "Why *Brown* Still Matters," 50.

<sup>87</sup> James L. Moore III and Chance W. Lewis, "Guest Editorial: 60 Years after *Brown v. Board of Education*: Educational Advancement or Decline?," *The Journal of Negro Education* 83, no. 3 (Summer 2014): 191-192.

Like Moore and Lewis, Janelle Scott and Rand Quinn, who are education professors at the University of California, Berkeley and the University of Pennsylvania, respectively, express concern over “historic levels of racial and social inequality and segregation within the United States.”<sup>88</sup> Their survey of the literature on school segregation concludes that racial integration has slowly reversed since 1980 and has been accepted by many as an immovable reality in society. Moreover, low-income Americans and people of color were disproportionately affected by the 2008 recession. The housing and financial crisis affected not just people’s housing and livelihoods, but also caused devastating state budget cuts in education with adverse outcomes on student achievement.<sup>89</sup>

Using this research as a foundation, the authors examine the proliferation of charter schools and other market-based school choice reforms as a possible remedy for racial and economic gaps in education. Proponents often cite *Brown v. Board* as the edict that justifies charter schools’ ostensible goal of subverting the public school system and giving low-income students of color a viable alternative to decades of stagnant progress. This is despite the fact that charter schools tend to be more racially-segregated than their public school counterparts; in fact, advocates argue, this could be an asset if students of color are in a less discriminatory and more affirming setting.<sup>90</sup> However, the authors suggest that charter schools have lined the pockets of a “wealthy, predominantly White male venture philanthropic network” without delivering on the promise of better academic outcomes for students of color. Instead, the authors argue more systemic changes are needed in the existing public school system.<sup>91</sup>

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<sup>88</sup> Janelle Scott and Rand Quinn, “The Politics of Education in the Post-*Brown* Era: Race, Markets, and the Struggle for Equitable Schooling,” *Educational Administration Quarterly* 50, no. 5 (2014): 750.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid., 750-753.

<sup>91</sup> Ibid., 753-754 and 757-758.

James D. Anderson, a dean and history professor at the University of Illinois Urbana-Champaign, notes in his article “Crosses to Bear and Promises to Keep: The Jubilee Anniversary of *Brown v. Board of Education*” that as the country moves farther from the court case, more scholars are citing African-American “cultural deficits,” such as anti-intellectualism and oppositional defiance, as the primary cause of persisting educational achievement gaps. These scholars believe that *Brown v. Board* and ensuing desegregation were sufficient in leveling the playing field for African-Americans. Any inequality that continues is no longer the fault of governmental oppression or unjust laws; the onus now falls on African-Americans themselves to decide what they want to achieve.<sup>92</sup>

In between citing authors who perpetuate these beliefs, Anderson points out that racial and economic segregation and disparities in school funding persist in America’s public schools. Racial segregation is particularly severe in charter schools and private schools.<sup>93</sup> Anderson also argues that systemic racism in the education system, a lack of governmental oversight, and pervasive stereotypes about people of color are an impediment to progress, but so-called cultural deficiencies are not. As the country moves farther from the anniversary of *Brown*, Anderson urges policymakers to not give up on finding policy solutions to these inequities.<sup>94</sup>

Richard Rothstein of the Economic Policy Institute takes up this charge in his article, “*Brown v. Board*: Why Have We Been So Disappointed? What Have We Learned?” Unlike Klarman, Rothstein celebrates *Brown v. Board* as the catalyst for the Civil Rights Movement, including giving “encouragement” to nonviolent protestors in the South, and providing foundation for federal civil rights legislation. However, Rothstein firmly believes the court case

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<sup>92</sup> James D. Anderson, “Crosses to Bear and Promises to Keep: The Jubilee Anniversary of *Brown v. Board of Education*,” *Urban Education* 39, no. 4 (July 2004): 360-365.

<sup>93</sup> *Ibid.*, 359-360 and 370-371.

<sup>94</sup> *Ibid.*, 370-371.

has not upheld its promise of addressing racial segregation and equality of opportunity in schools.<sup>95</sup>

Rothstein finds that “[t]he typical black student now attends a school where only 29 percent of his or her fellow students are white, down from 36 percent in 1980.” These numbers are particularly flagrant in the South, where courts have gradually released school districts of their obligation to continue to desegregate schools. Rothstein also expresses concern about the persisting “achievement gap” between white and African-American students, as measured by reading and math scores. He argues that school with a high number of African-American students and student in poverty require more financial resources to fund early childhood programs, after-school activities, smaller class sizes, and more instructional time for remedial teaching. He also highlights the spillover effects that systemic issues like health care and housing inequality have in education.<sup>96</sup>

In their article “The Troublesome Legacy of *Brown v. Board of Education*,” education professors Gerardo R. López and Rebeca Burciaga of Loyola University New Orleans and San José State University, respectively, address the elephant in the room: Why do scholars continually write articles that commemorate *Brown v. Board* as a milestone, yet concede significant inequities still exist in the US? After reviewing anniversary literature on the court case at 30 years, 40 years, 50 years, and 60 years, the authors express concern that “individuals had been asking the same set of questions for well more than 30 years.”<sup>97</sup> Unlike Rothstein, López and Burciaga doubt that *Brown v. Board* provided much direction inspiration for the civil

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<sup>95</sup> Richard Rothstein, “*Brown v. Board*: Why Have We Been So Disappointed? What Have We Learned?,” Economic Policy Institute, April 17, 2014, <https://www.epi.org/publication/brown-at-60-why-have-we-been-so-disappointed-what-have-we-learned/>.

<sup>96</sup> Ibid.

<sup>97</sup> Gerardo R. López and Rebeca Burciaga, “The Troublesome Legacy of *Brown v. Board of Education*,” *Educational Administration Quarterly* 50, no. 5 (2014): 798.

rights movement since landmark events, including Rosa Parks' bus protest, the Little Rock Nine's attempted integration, and the March on Washington, occurred years after the Supreme Court nominally struck down "separate but equal."<sup>98</sup> They even cite Bell's argument that the Supreme Court ruled unanimously on *Brown* because of "interest convergence," not antiracist ideology.<sup>99</sup>

Similar to other authors, López and Burciaga detail the levels of systemic racism that continue to hinder the educational environment for African-American children. They argue that using *Brown v. Board* as a symbol of progress toward racial and educational inequality distracts from very real issues that still exist today. Additionally, the image of racial integration replacing segregation based on a Supreme Court order is powerful but insufficient in measuring progress. The authors point out that the Supreme Court has slowly walked back federal pressure on racial issues, including higher education admissions and affirmative action.<sup>100</sup>

López and Burciaga conclude their article with a damning statement: "Simply put: We believe in Brown and we hang onto it dearly like an old teddy bear or a precious family heirloom."<sup>101</sup> They pose a new set of questions scholars should ask themselves continuously, not just once every ten years. The question of whether *Brown* has lived up to its promise, López and Burciaga argue, is rhetorical and always answered in the negative. Scholars should direct their attention to issues of racial and educational inequality that are not going away, even as the country continues to celebrate the anniversary of *Brown v. Board*.<sup>102</sup>

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<sup>98</sup> Ibid., 798-800.

<sup>99</sup> Ibid., 808.

<sup>100</sup> Ibid., 799-806.

<sup>101</sup> Ibid., 807.

<sup>102</sup> Ibid., 807-808.

## Conclusion

After reviewing the works commemorating the 50th anniversary of *Brown v. Board*, no single dialogue emerges, but rather a series of multidisciplinary agreements and disagreements. Several scholars reveal the multitude of reasons why the Supreme Court unanimously overturned *Plessy v. Ferguson* and why several justices did so reluctantly. This explains why the decision was narrow in scope, addressing only segregation in schools and leaving integration up to lower courts and local school districts. It also explains why the federal government did not enforce desegregation as strongly as advocates would have hoped for.

Scholars largely agree that gaps between white and African-American students exist in schools, including standardized test scores and levels of school funding. They also acknowledge that many schools are still racially segregated, particularly because of the relationship between school populations and housing, as well as the efforts of some wealthy white families to avoid placing their children in racially-diverse settings. Scholars are less unanimous on *Brown v. Board*'s impact on racial justice as a whole. While some historians celebrate the case as a milestone in the country's path towards equality, there is a growing chorus that argues *Brown v. Board* was limited in its impact. Their work suggests putting the case on a pedestal distracts from the efforts of those who still advocate for social justice.

These works reveal that commemorating the anniversary of a significant historical event can be productive if scholars are willing to be critical and challenge conventional wisdom. While scholars may disagree on the precise legacy of *Brown v. Board*, it is apparent that massive racial inequities still exist in the education system and other areas of society. Policymakers should not wait for the next anniversary to address these issues.

## Chapter 2

### Breaking Down Charter School Support: A Case Study Approach

The future of charter schools in America is uncertain. In February 2020, the Trump administration proposed changing the Charter Schools Program (CSP) grant and 28 other education grants into a single block grant program. New charter schools rely on the CSP for funding when they open and begin to enroll students.<sup>103</sup> The move was surprising since former Secretary of Education Betsy DeVos is a long-time charter school advocate.

This followed a trend on the federal level of Republicans shifting support from charter schools to voucher programs and privatization of education. Charter schools were perceived by members of the Trump administration and other Republicans in Congress as receiving primarily Democratic support, especially among urban communities of color where many charter schools are located.<sup>104</sup> Complicating this narrative is the fact that 2020 progressive Democratic presidential candidates Elizabeth Warren and Bernie Sanders opposed charter schools on the campaign trail, and in recent years, Democratic governors have answered the calls of charter school opponents by signing legislation that limits their states' expansions of charter schools.<sup>105</sup> President Joe Biden and the current secretary of education, Miguel Cardona, have taken a moderate position on charter schools.<sup>106</sup> The administration has advocated for banning “for-profit

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<sup>103</sup> Andrew Lewis, “Opinion: Donald Trump and Bernie Sanders align in disdain for charter schools,” *The Atlanta Journal-Constitution*, Cox Enterprises, March 5, 2020, <https://www.ajc.com/blog/get-schooled/opinion-donald-trump-and-bernie-sanders-align-disdain-for-charter-schools/h0ltzIQANtKWvWVUEpUUeM/>.

<sup>104</sup> Erica L. Green, “Charter Schools in Surprise Political Fight as Trump and Democrats Turn Away,” *The New York Times*, The New York Times Company, February 25, 2020, <https://www.nytimes.com/2020/02/25/us/politics/charter-schools-trump-devos-democrats.html>.

<sup>105</sup> *Ibid.*

<sup>106</sup> Evie Blad, “Where Biden’s Choice for Education Secretary Stands on Key K-12 Issues,” *Education Week*, Editorial Projects in Education, Inc., December 22, 2020, <https://www.edweek.org/policy-politics/where-bidens-choice-for-education-secretary-stands-on-key-k-12-issues/2020/12>.



private charter businesses from receiving federal funding,” but no other changes in charter school policy have been proposed, essentially maintaining the status quo.<sup>107</sup>

This leads to the question: who are the true supporters of charter schools? Given the messiness of political stances on the federal level, more clarity can be provided by looking to the states. Based on case studies of state politics in Louisiana and Arizona, two states known for their high charter school numbers, charter schools receive a degree of bipartisan support. However, their growth is initially driven by Republican lawmakers and neoliberal ideology. While charter school advocates claim to have the interests of schools – and particularly students of color – in mind, BIPOC communities and teachers unions are excluded or pushed out of the policymaking process. BIPOC students have not benefitted in a significant way from the construction of charter schools, as evidenced in both academic achievement indicators and the entrenched racial segregation of schools.

This paper begins with a literature review that defines “charter schools,” surveys the history of their implementation across the US, and discusses the arguments that political parties and various political interest groups make for or against the schools. Following the literature review, there are two case studies of Louisiana and Arizona, each with histories of charter school implementation that have overlapping characteristics. Finally, there is a brief conclusion and call for future research.

## **Literature review**

Charter schools fall under the broad umbrella of “school choice,” defined as “a variety of

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<sup>107</sup> Valerie Strauss, “Biden promised to end federal funding of for-profit charter schools. A new report explains how they operate.,” *The Washington Post*, Nash Holdings, March 22, 2021, <https://www.washingtonpost.com/education/2021/03/22/biden-promised-to-end-federal-funding-of-for-profit-charter-schools-heres-how-they-operate/>.

programs providing families the option to choose the school their children attend.”<sup>108</sup> While they are publically funded, charter schools are beholden to a charter, or contract, between the school and either the state or a nearby school district.<sup>109</sup> Moreover, the schools must have an authorizer, which is usually a community group, business/organization, or university, though it may be a school district or the state itself depending on that state’s policy.<sup>110</sup> To encourage innovation and offer a different experience than traditional public schools, charter schools do not have to follow many of the regulatory requirements that traditional public schools do.<sup>111</sup>

The first charter school was founded in Minnesota in 1992.<sup>112</sup> Charter schools have since grown to serve a significant number of students. By the 2016-2017 school year, 7 percent of US public schools were charter schools, totaling about 7,000 charter schools and 3 million students.<sup>113</sup> In February 2020, West Virginia became the latest state to authorize charter schools.<sup>114</sup> Only four states do not authorize charter schools: Nebraska, North Dakota, South Dakota, and Vermont.<sup>115</sup>

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<sup>108</sup> Mark Berends, “Sociology and School Choice: What We Know After Two Decades of Charter Schools,” *Annual Review of Sociology* 41 (2015): 160.

<sup>109</sup> “Public Charter School Enrollment,” National Center for Education Statistics, U.S. Department of Education, May 2019, [https://nces.ed.gov/programs/coe/indicator\\_cgb.asp](https://nces.ed.gov/programs/coe/indicator_cgb.asp).

<sup>110</sup> Kyle Koller and David M. Welsch, “Location Decisions of Charter Schools: An Examination of Michigan,” *Education Economics* 25, no. 1–2 (2017): 159 and 163.

<sup>111</sup> Sarah Reckhow, Matt Grossmann, and Benjamin C. Evans. “Policy Cues and Ideology in Attitudes toward Charter Schools,” *Policy Studies Journal* 43, no. 2 (2015): 207.

<sup>112</sup> Berends, “Sociology and School Choice: What We Know After Two Decades of Charter Schools,” 161.

<sup>113</sup> “Public Charter School Enrollment.”

<sup>114</sup> Hannah Goetz, “West Virginia BOE passes charter school policy,” WOWKTV, Nexstar Broadcasting, Inc., February 12, 2020, <https://www.wowktv.com/news/local/west-virginia-boe-passes-charter-school-policy/>.

<sup>115</sup> Kevin P. Brady and Wayne D. Lewis Jr., “Unchartered Territory for the “Bluegrass State”: Lessons to Be Learned From Over a Quarter-Century of State Charter School Legislation,” *Arkansas Law Review* 72, no. 2 (2019): 367;

Elsie Arntzen and Robert Watson, “Innovation, choices in Montana schools,” *Missoulain*, Lee Enterprises, January 25, 2018, [https://missoulain.com/opinion/columnists/innovation-choices-in-montana-schools/article\\_a2588868-b7cf-5394-aa0c-507c6e742524.html](https://missoulain.com/opinion/columnists/innovation-choices-in-montana-schools/article_a2588868-b7cf-5394-aa0c-507c6e742524.html). The article by Brady and Lewis erroneously states that Montana and West Virginia do not have laws that authorize charter schools. The article by Arntzen and Watson confirms that Montana has two charter schools. The previously cited article by Goetz reports that West Virginia recently authorized charter schools, although only in a limited capacity. Moreover, no charter schools were operating in West Virginia at the time this paper was written.

The concept of “school choice” was devised by conservative economist Milton Friedman. In his 1955 article “The Role of Government in Education,” Friedman argued schools should provide money for school vouchers but not actually operate the schools. Instead, schools should be operated privately and locally while featuring a variety of options to choose from.<sup>116</sup> Even religiously-affiliated schools were on the table. This competitive marketplace, he reasoned, would increase the quality of all schools and meet varying parent demands, all with minimal government involvement.<sup>117</sup> While Friedman spoke specifically of voucher programs, his broad arguments for school choice have been applied to charter schools by conservative supporters.

Charter schools at their inception were also celebrated by liberals, who saw them as an opportunity for “good government.” While still publically funded, liberals hoped charter schools would be less bureaucratic than traditional public schools and would provide better opportunities for low-income students and students of color. In 1991, when Minnesota passed its charter-authorizing law, the schools received early public support from Albert Shanker, the president of the American Federation of Teachers (AFT) teachers union. He envisioned that charter schools would provide extra support for students from marginalized backgrounds.<sup>118</sup> These schools appeared the fastest in urban areas, and many were created to serve specific racial groups.<sup>119</sup> While Shanker eventually opposed charter schools because of their anti-union reputation, his initial endorsement is often cited as proof of historical charter school support from the political left.<sup>120</sup>

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<sup>116</sup> Stephen D. Mandrgoc, “Contested Education, Continuity, and Change in Arizona and New Mexico, 1945-2010” (dissertation, University of New Mexico, 2018), 259. [https://digitalrepository.unm.edu/hist\\_etds/260](https://digitalrepository.unm.edu/hist_etds/260)

<sup>117</sup> Diane Ravitch, *The Death and Life of the Great American School System* (New York: Basic Books, 2010), 113-114.

<sup>118</sup> *Ibid.*, 122-124.

<sup>119</sup> *Ibid.*, 125-126.

<sup>120</sup> *Ibid.*, 122-124.

Charter schools are still promoted by advocates for high quality schools in urban areas, particularly for low-income students and students of color. There are several books featuring narrative-based accounts of charter schools that enroll predominately African-American and Latinx students.<sup>121</sup> However, the most well-known account of charter schools is the documentary *Waiting for Superman*. The film follows five students and their families, most of whom are people of color, who are dissatisfied with their traditional public school options. These students attempt to enroll at charter schools, but four out of five are not taken off the waitlists for their respective schools, suggesting there is an unmet demand for more innovative, equitable school reform.<sup>122</sup> Due to the depiction of these students' experiences in the traditional education system, *Waiting for Superman* was a watershed moment for liberal support of charter schools.<sup>123</sup>

There are several studies that corroborate charter school supporters' assertion that urban charter schools often outperform nearby public schools.<sup>124</sup> Moreover, the rise of charter schools in urban cities is seen by some liberal education activists as preferable to more conservative school choice options like state voucher programs, which are controversial because they have the potential to subsidize private school tuition costs with public tax dollars. This is a possible contributing factor for why charter schools receive support from BIPOC communities in low-income urban areas: the schools are seen as a less worse option for reform.<sup>125</sup>

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<sup>121</sup> Examples include Mary C. Bounds, *A Light Shines in Harlem: New York's First Charter School and the Movement It Led* (Chicago: Lawrence Hill Books, 2014); Joanne Jacobs, *Our School: The Inspiring Story of Two Teachers, One Big Idea, and the School That Beat the Odds* (New York: Palgrave MacMillan, 2005); and Robert Pondiscio, *How the Other Half Learns: Equality, Excellence, and the Battle Over School Choice* (New York: Penguin Random House, 2019).

<sup>122</sup> *Waiting for Superman*, directed by Davis Guggenheim (2010; Hollywood, CA: Paramount Vantage, 2010), DVD.

<sup>123</sup> Dana Goldstein, "Grading 'Waiting for Superman,'" *The Nation*, October 11, 2010, 20-23.

<sup>124</sup> "Urban Charter School Study Report on 41 Regions," *Center for Research on Education Outcomes at Stanford University* (2015): v. <https://urbancharters.stanford.edu/download/Urban%20Charter%20School%20Study%20Report%20on%2041%20Regions.pdf>; Joshua D. Angrist, Parag A. Pathak, and Christopher R. Walters, "Explaining Charter School Effectiveness," *American Economic Journal: Applied Economics* 5, no. 4 (2013): 24.

<sup>125</sup> Janelle T. Scott, "Market-Driven Education Reform and the Racial Politics of Advocacy," *Peabody Journal of Education* 86, no. 5 (2011): 585-586.

Charter schools continue to receive support from conservative business circles as well, demonstrating the reach of Milton Friedman's original argument. Philanthropic organizations like the Bill and Melinda Gates Foundation and the Walton Family Foundation provide substantial financial support for school choice efforts.<sup>126</sup> Wall Street investors publicly state that charter schools are a superior alternative to public schools, and they often find charter schools to be a profitable investment.<sup>127</sup> The arguments for increasing market competition and decreasing regulation in education can be widely found in publications by the American Enterprise Institute, the Heritage Foundation, and other prominent pro-market think tanks. These publications are influential in the political and academic discourses on charter schools.<sup>128</sup>

The special interest group arguably most opposed to charter schools is teachers unions.<sup>129</sup> Nearly 90 percent of charter schools have nonunionized teachers, and the schools' alternative curriculum offerings and funding apparatuses threaten the viability of traditional public schools.<sup>130</sup> Teachers unions are concerned that charter schools overwork and underpay their employees while siphoning resources that would otherwise go to nearby public schools.<sup>131</sup> They also point out that charter school results are mixed. While urban charter schools perform at the same level or slightly above nearby traditional public schools, suburban and rural charter schools tend to perform at the same level or slightly below traditional public schools.<sup>132</sup> Teachers unions'

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<sup>126</sup> Matthew Carr and Marc Holley, "Maximizing Return: An Evaluation of the Walton Family Foundation's Approach to Investing in New Charter Schools," *The Foundation Review* 6, no. 4 (2014): 6.

<sup>127</sup> Murray Levine and Adeline G. Levine, "Follow the Money: There's No Business Like the Ed. Business," *American Journal of Orthopsychiatry* 84, no. 4 (2014): 382.

<sup>128</sup> Kevin G. Welner, "Free-Market Think Tanks and the Marketing of Education Policy," *Dissent*, Spring 2011, 39-42.

<sup>129</sup> Reckhow, Grossmann, and Evans, "Policy Cues and Ideology in Attitudes toward Charter Schools," 210.

<sup>130</sup> Levine and Levine, "Follow the Money: There's No Business Like the Ed. Business," 379.

<sup>131</sup> Sandra Vergari, "The Politics of Charter Schools," *Educational Policy* 21, no. 1 (2007): 28-29.

<sup>132</sup> Angrist, Pathak, and Walters, "Explaining Charter School Effectiveness," 24-25.

argue that when combining mediocre student outcomes with other negative consequences, charter schools have a net-negative influence on the public education system.

Literature supportive of charter schools depicts unions in a more cynical light. These authors posit that teachers unions primarily exist to advocate for increased wages and other protections through collective bargaining while maintaining a “monopoly” on federal education funds. They point out that teachers unions spend a considerable amount of money lobbying state legislatures to oppose charter schools and other school choice initiatives, and that the vast majority of their political donations go to Democrats.<sup>133</sup> In response, teachers unions argue that charter schools are part of a Republican strategy to diminish the financial and organization capacity of teachers unions in an attempt to weaken the Democratic Party.<sup>134</sup>

An additional argument made by unions and other opponents to charter schools is that they perpetuate racial inequality. Many of the largest charter school networks, such as Success Academy Charter Schools and the Knowledge is Power Program (KIPP), are criticized for their use of strict “no excuses” discipline policies.<sup>135</sup> Charter schools have higher rates of suspensions than traditional public schools, particularly for students of color.<sup>136</sup> Critics argue charter schools’ test scores are artificially high because they weed out students with these disciplinary policies, causing lower-achieving students to transfer schools or drop out altogether.<sup>137</sup>

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<sup>133</sup> Andrew J. Coulson, “The Effects of Teachers Unions on American Education,” *Cato Journal* 30, no. 1 (2010): 155 and 162-166.

<sup>134</sup> Barbara Miner, “Why The Right Hates Public Education,” Progressive, The Progressive Inc., February 1, 2004. <https://progressive.org/public-school-shakedown/right-hates-public-education>.

<sup>135</sup> Daniel J. Losen, Michael A. Keith II, Cheri L. Hodson and Tia E. Martinez, “Charter Schools, Civil Rights and School Discipline: A Comprehensive Review,” *The Center for Civil Rights Remedies at The Civil Rights Project*, University of California Los Angeles: 9 and 12. <https://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/charter-schools-civil-rights-and-school-discipline-a-comprehensive-review/losen-et-al-charter-school-discipline-review-2016.pdf>

<sup>136</sup> Ibid., 8-9.

<sup>137</sup> Ibid., 9.

These opponents are also concerned that charter schools exacerbate school segregation. Milton Friedman has been critiqued for articulating his initial proposal for school choice at the same time private schools were emerging as “segregation academies” in the years after the 1954 Supreme Court decision *Brown v. Board of Education*, which mandated racial integration of public schools.<sup>138</sup> Data suggests charter schools are the new “segregation academies,” as white students are more likely to attend charter schools that are homogenously white, and charter schools are a reliable “white flight” option within school districts where predominately white schools do not already exist, particularly when parents do not have the ability to change school districts.<sup>139</sup> While there are higher proportions of students of color in charter schools than traditional public schools, students of color are more likely to attend charter schools that already have a high percentage of students of color.<sup>140</sup> So while urban charter schools that predominately enroll students of color may have higher levels of academic achievement, there are other equity issues that make them controversial.

When taking a step back and examining the ideological underpinnings of the two major political parties, it becomes clear that charter schools are not a neatly partisan issue. Both major parties support charter schools to some degree.<sup>141</sup> Republican support for charter schools has its roots in conservative political ideology. At its most basic, “conservatism” is a belief that the past should be celebrated and efforts should be taken to reclaim the past.<sup>142</sup> For education policy, conservative rhetoric emphasizes maximizing parents’ “liberty,” or their ability to make parent

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<sup>138</sup> Mandrgoc, “Contested Education, Continuity, and Change in Arizona and New Mexico, 1945-2010,” 259-260.

<sup>139</sup> Linda A. Renzulli and Lorraine Evans, “School Choice, Charter Schools, and White Flight,” *Social Problems* 52, no. 3 (2005), 401 and 410-413.

<sup>140</sup> *Ibid.*, 401-403.

<sup>141</sup> Reckhow, Grossmann, and Evans, “Policy Cues and Ideology in Attitudes toward Charter Schools,” 207.

<sup>142</sup> James Alexander, “A Dialectical Definition of Conservatism,” *Philosophy* 91 (2016): 220-222.

choices on their own, free of government intervention.<sup>143</sup> Charter schools embody a conservative desire to return to a mythos of how education used to be, when there was less federal regulatory oversight of schools and parents had more choice over where to enroll their children.<sup>144</sup>

This is captured by the term “neoliberalism,” an ideology that holds that “human well-being can best be advanced by the maximization of entrepreneurial freedoms within an institutional framework characterized by private property rights, individual liberty, free markets and free trade. The role of the state is to create and preserve an institutional framework appropriate to such practices.”<sup>145</sup> Neoliberalism has influenced Republican and Democratic agendas throughout the parties’ histories; it is often viewed as a means to achieving ideals like “democracy” and “individual rights” that are popular across the political spectrum.<sup>146</sup> Charter schools are a neoliberal education reform, as they lend themselves to decreased government control of schools and they encourage the private sector to improve the quality of schools through competition. This appeals to Republicans.<sup>147</sup>

The Obama administration, particularly Obama’s first education secretary, Arne Duncan, used similar rhetorical appeals to “competition” and “innovation” when promoting charter schools. The administration allocated \$4.35 billion to the “Race to the Top” program, which offered federal funds to states that adopted the administration’s preferred education reforms,

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<sup>143</sup> Aaron Tang, “School Vouchers, Special Education, and the Supreme Court,” *University of Pennsylvania Law Review* 167 (2018): 392.

<sup>144</sup> Miner, “Why The Right Hates Public Education,” 2004; Lillian Mongeau, “Republicans and education - where they’ve been and where they’re going,” The Hechinger Report, Teachers College at Columbia University, July 17, 2016. <https://hechingerreport.org/republicans-and-education-where-theyve-been-and-where-theyre-going>.

<sup>145</sup> David Harvey, “Neo-Liberalism as Creative Destruction,” *Geografiska Annaler. Series B, Human Geography* 88, no. 2 (2006): 145.

<sup>146</sup> Amy Stuart Wells, Julie Slayton, and Janelle Scott, “Defining Democracy in the Neoliberal Age: Charter School Reform and Educational Consumption,” *American Educational Research Journal* 39, no. 2 (2002): 341-344.

<sup>147</sup> Miner, “Why The Right Hates Public Education,” 2004; Mongeau, “Republicans and education - where they’ve been and where they’re going,” 2016; Stuart Wells, Slayton, and Scott, “Defining Democracy in the Neoliberal Age: Charter School Reform and Educational Consumption,” 344-345; Richard Mora and Mary Christianakis, “Charter Schools, Market Capitalism, and Obama's Neo-liberal Agenda,” *Journal of Inquiry & Action in Education* 4, no. 1 (2011): 94.



including expanding the number of charter schools and easing charter school regulations. This means the most federal support ever provided for charter schools came from a Democratic president.<sup>148</sup> The administration was perceived as moving Democrats to the political right on education policy. However, it is worth noting that the Obama administration's support for charter schools embodied a fusion of neoliberalism pro-market logic and two common tenets of American "liberal" policies: increasing government spending and expanding the role of the federal level of government.<sup>149</sup>

This is not the only way neoliberalism manifests itself differently in the Democratic Party as it pertains to education policy. Democrats support charter schools as a neoliberal reform because they see local control and self-determination for schools as an antidote to racial inequality and other issues not adequately addressed in traditional public schools.<sup>150</sup> This is why Democrats are more likely than Republicans to frame charter schools as a civil rights issue.<sup>151</sup>

Racial inequality became a focus for the Democratic Party when the Republican and Democratic Parties experienced a realignment in the 1950s and 1960s, largely due to the civil rights movement. In 1964 and 1968, respectively, Republican presidential candidates Barry Goldwater and Richard Nixon appealed to southern white Democrats who were displeased with a perceived federal overreach on segregation and other racial policies.<sup>152</sup> Nixon emulated a toned-down version of the infamous Alabama Governor George Wallace to court southern white

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<sup>148</sup> Mora and Christianakis, "Charter Schools, Market Capitalism, and Obama's Neo-liberal Agenda," 94-98.

<sup>149</sup> Welner, "Free-Market Think Tanks and the Marketing of Education Policy," 39; Douglas N. Harris, "Are the education proposals of the Democratic presidential candidates really that liberal?," Brookings, The Brookings Institution, June 26, 2019, <https://www.brookings.edu/blog/brown-center-chalkboard/2019/06/26/are-the-education-proposals-of-the-democratic-presidential-candidates-really-that-liberal>.

<sup>150</sup> Stuart Wells, Slayton, and Scott, "Defining Democracy in the Neoliberal Age: Charter School Reform and Educational Consumption," 344-345.

<sup>151</sup> Welner, "Free-Market Think Tanks and the Marketing of Education Policy," 39-40.

<sup>152</sup> Robertson, *Federalism and the Making of America*, 71-72.

voters. This was known as the “Southern Strategy.”<sup>153</sup> In response, many African-Americans left the Republican Party for the Democratic Party.<sup>154</sup> Since this era, Democrats have focused more on racial inequality than Republicans, demonstrating why Democrats invoke racial inequality when advocating for charter schools.

Studies find that on a state level, Republican lawmakers are more likely to support charter school laws than Democratic lawmakers, though some state Democratic lawmakers do support charter schools.<sup>155</sup> (The fact that charter school laws exist in 46 states suggests they have achieved at least some level of bipartisan support.) In addition, polling data reveals that Republican voters are more likely to support charter schools than Democratic voters.<sup>156</sup> Prominent members of both parties have endorsed charter schools in the past, but neither party has a definitive national stance on the policy.<sup>157</sup>

When assessing the reasons why different groups support or oppose charter schools, it appears that charter schools are not a clear Republican or Democratic issue, as the schools’ inherent neoliberal nature appeals to both parties. While unions are almost uniformly opposed to charter schools, communities of color are divided on their merits. This is because urban charter schools that serve a disproportionate number of BIPOC students tend to be more successful than competing traditional public schools, but charter schools are criticized for other racially-inequitable practices. An analysis of two states’ experiences of enacting charter school

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<sup>153</sup> Michelle Brattain, “Forgetting the South and the Southern Strategy,” *Miranda* 5 (2011): 2-3.

<sup>154</sup> Adam Harris, “American is Divided by Education,” The Atlantic, Emerson Collective, November 7, 2018, <https://www.theatlantic.com/education/archive/2018/11/education-gap-explains-american-politics/575113/>.

<sup>155</sup> Thomas T. Holyoke, Jeffrey R. Henig, Heath Brown, and Natalie Lacireno-Paquet, “Policy Dynamics and the Evolution of State Charter School Laws,” *Policy Sciences* 42, no. 1 (2009): 41-42; Michael W. Kirst, “Politics of Charter Schools: Competing National Advocacy Coalitions Meet Local Politics,” *Peabody Journal of Education* 82, no. 2/3 (2007): 195-196.

<sup>156</sup> Reckhow, Grossmann, and Evans, “Policy Cues and Ideology in Attitudes toward Charter Schools,” 210.

<sup>157</sup> *Ibid.*, 207-210.

legislation and expanding charter schools offers a more nuanced perspective on who supports charter schools, who opposes them, and who is left behind in the policymaking process.

### **Case Study 1: Louisiana**

Louisiana's initial charter school law was passed in 1995. At the time, the governor's office and both chambers of the state legislature were controlled by Democrats.<sup>158</sup> The first charter school in Louisiana was founded a year later in the city of Jefferson, which borders New Orleans.

Jefferson Community School was specifically designed to serve students in grades 6 through 8 who were expelled from nearby public schools. Curriculum and instruction were individualized to these students' academic and social-emotional needs, as many were from socioeconomically marginalized and "at-risk" backgrounds. The school's goal was to transfer the students back to the school from which they came within one year.<sup>159</sup> In this sense, Jefferson Community School had a reciprocal relationship with traditional public schools; the charter school's services complemented the schools, but it did not seek to replace them.

In 2019, New Orleans became the first city with all charter schools and no public schools.<sup>160</sup> The movement toward charter schools escalated after Hurricane Katrina in August 2005. Departing from the original vision for charter schools like Jefferson Community School, politicians used the natural disaster as an opportunity to reshape the public school landscape while excluding input from African-American families and teachers unions in the process.

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<sup>158</sup> Peter Cook, "Charter Schools Are Not A 'Republican' Thing," Retort, PE+CO, <https://retort.online/2018/04/20/charter-schools-are-not-a-republican-thing>.

<sup>159</sup> Peggy C. Kirby, "First Charter School in Louisiana Provides an Alternative to Expulsion for Students at Risk," *Middle School Journal* 30, no. 5 (May 1999): 13-16.

<sup>160</sup> Della Hasselle, "Now an all-charter district, New Orleans schools experiment still faces questions," *The Times-Picayune | The New Orleans Advocate*, Georges Media Group, August 12, 2019, [https://www.nola.com/news/education/article\\_30fbef6e-b476-11e9-a3b5-57480c7a30f7.html](https://www.nola.com/news/education/article_30fbef6e-b476-11e9-a3b5-57480c7a30f7.html).

Hurricane Katrina reached Louisiana on August 29, 2005. Nearly 80 percent of New Orleans was flooded, forcing around 1 million people in the area to evacuate.<sup>161</sup> One-quarter of the New Orleans population did not leave, and over 1,500 people are estimated to have been killed throughout the state. Additionally, the hurricane caused \$40 to 50 billion in total economic losses throughout Orleans Parish.<sup>162</sup> Included in these damages were the “displacement of 64,000 students and \$800 million in damage to public school buildings. Fewer than twenty of the 120 school buildings remained useable after the hurricane.”<sup>163</sup> Eighty percent of public school buildings in the city were damaged.<sup>164</sup>

The push to expand charter schools in New Orleans began almost immediately after Hurricane Katrina. The Heritage Foundation argued the rebuilding period was an opportunity to expand school choice options and private sector involvement in education, including charter schools. Similar arguments were made publicly by President George W. Bush and other members of his administration.<sup>165</sup> Eventually, millions of dollars were made available from the Charter School Program and other US Department of Education grants. The Bush administration essentially used federal funds as leverage to pressure the Louisiana state government to expand charter schools in New Orleans.<sup>166</sup>

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<sup>161</sup> R.W. Kates et al., “Reconstruction of New Orleans after Hurricane Katrina: A research perspective,” *Proceedings of the National Academy of Sciences* 103, no. 40 (2006): 14654.

<sup>162</sup> *Ibid.*, 14654-14655.

<sup>163</sup> Robert Garda, “Searching for Equity Amid a System of Schools: The View from New Orleans,” *Fordham Urban Law Journal* 42, no. 3 (April 2016): 621.

<sup>164</sup> Kristen L. Buras, *Charter Schools, Race, and Urban Space: Where the Market Meets Grassroots Resistance* (New York: Routledge, 2015), 39.

<sup>165</sup> *Ibid.*, 43-44.

<sup>166</sup> *Ibid.*, 44-46.

A turning point in the movement for charter schools was a special legislative session facilitated by Democratic governor Kathleen Blanco in November 2005.<sup>167</sup> While the session was ostensibly called to rebuild the education system for the entire state, it soon became clear that New Orleans was the focus.<sup>168</sup> Two years prior, a state-run organization called the Recovery School District (RSD) was created to oversee failing schools.<sup>169</sup> In the months following Hurricane Katrina, the agency was explicit in its intent to convert New Orleans public schools into charter schools.<sup>170</sup> This legislative special session was a vehicle to make this happen. Governor Blanco referred to the hurricane's devastation as a "golden opportunity for rebirth."<sup>171</sup>

During the special session, the legislature passed a bill colloquially known as "Act 35." In Louisiana, all schools are given a "School Performance Score" (SPS) based on attendance rates, dropout rates, and standardized test scores. Act 35 redefined a "failing" school from holding an SPS score of 60 (out of 200) to 87.4, nearly the state average.<sup>172</sup> As a result, the number of schools from the Orleans Parish now under the jurisdiction of the RSD increased from 13 to 107 out of 120 total.<sup>173</sup>

In addition to being spearheaded by the Democratic governor, Act 35 received broad support from both chambers of the legislature.<sup>174</sup> There was opposition from lawmakers representing New Orleans, a city where over 90 percent of students are African-American.<sup>175</sup>

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<sup>167</sup> Ibid., 45; Erik W. Robelen, "La. Lawmakers OK Plan to Give State Control of Most New Orleans Schools," Education Week, Editorial Projects in Education, Inc., November 23, 2005, <https://www.edweek.org/ew/articles/2005/11/22/13louisiana.h25.html>.

<sup>168</sup> Robelen, "La. Lawmakers OK Plan to Give State Control of Most New Orleans Schools."

<sup>169</sup> Hasselle, "Now an all-charter district, New Orleans schools experiment still faces questions."

<sup>170</sup> Mathilde Lind Gustavussen, "Contending with school reform: Neoliberal restructuring, racial politics, and resistance in post-Katrina New Orleans," *Focaal—Journal of Global and Historical Anthropology* 82 (2018): 97.

<sup>171</sup> Robelen, "La. Lawmakers OK Plan to Give State Control of Most New Orleans Schools."

<sup>172</sup> Kristen Buras, "The Disaster Ten Years Later," *Progressive*, December 2014 / January 2015, 23.

<sup>173</sup> Buras, *Charter Schools, Race, and Urban Space: Where the Market Meets Grassroots Resistance*, 45-46.

<sup>174</sup> Robelen, "La. Lawmakers OK Plan to Give State Control of Most New Orleans Schools."

<sup>175</sup> Joseph L. Boselovic, "Defining Pre-Katrina New Orleans: the structural transformation of public education in New Orleans and historical memory," *Policy Futures in Education* 12, no. 8 (2014): 1008.

However, this was not enough to stop legislation supported by legislators from the rest of the state.<sup>176</sup> One state senator from the suburbs purportedly said, “A failing school is whatever we say it is.”<sup>177</sup>

While the charter school expansion in New Orleans was influenced by the Republican Bush administration and pro-market ideology, legislative support for the changes was bipartisan. However, tensions between lawmakers from New Orleans and the rest of the state highlight there was significant African-Americans opposition to the expansion. This overlaps with the opposition from teachers unions.

In addition to Act 35, there were legislative measures taken to exclude community concerns about the vast changes made to New Orleans area schools. Governor Blanco signed two executive orders that abolished the requirement that parent and teacher input be considered before a public school is converted to a charter school.<sup>178</sup> It is worth noting that Act 35 was passed at a time when a disproportionate number of African-American families had their lives disrupted from Hurricane Katrina.<sup>179</sup> This contradicts the argument made by liberal school choice advocates that charter schools democratize education and create opportunities for urban racial minority communities to take ownership of their own schools.<sup>180</sup>

Adding to this exclusion was the disregard for the area’s predominately African-American public school teachers. New Orleans has a history of strong teachers union representation. In the years leading up to Hurricane Katrina, the United Teachers of New Orleans

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<sup>176</sup> Kevin Lawrence Henry, Jr. and Adrienne D. Dixon, “‘Locking the Door Before We Got the Keys’: Racial Realities of the Charter School Authorization Process in Post-Katrina New Orleans,” *Education Policy* 30, no. 1 (2016): 223.

<sup>177</sup> Buras, *Charter Schools, Race, and Urban Space: Where the Market Meets Grassroots Resistance*, 45.

<sup>178</sup> Henry, Jr. and Dixon, “‘Locking the Door Before We Got the Keys’: Racial Realities of the Charter School Authorization Process in Post-Katrina New Orleans,” 222.

<sup>179</sup> *Ibid.*, 223.

<sup>180</sup> *Ibid.*, 219-220 and 223.

consistently advocated for increasing school funding and equal wages between white teachers and black teachers.<sup>181</sup> At the time of the hurricane, over 70 percent of teachers in New Orleans were African-American.<sup>182</sup>

On November 30, the same day Governor Blanco signed Act 35, it was announced that 7,500 teachers and other school staff would lose their jobs. This was a consequence of the RSD essentially taking the place of the New Orleans Public School system, as the dissolution of the local school district jurisdiction meant that the district's teacher agreement was dissolved along with it. Teachers' benefits were also adversely affected, including a significant increase in health insurance premiums.<sup>183</sup>

As these teachers were forced out, and the public schools they once inhabited were chartered, new teachers from Teach for America and TeachNOLA filled in.<sup>184</sup> This allowed charter schools to pay teachers lower salaries and avoid promises of state pensions.<sup>185</sup> In addition to lacking traditional teaching licenses, these new teachers were disproportionately white and usually were recent graduates from elite colleges, creating a stark contrast between the teachers and the students they were hired to serve.<sup>186</sup>

The firing of thousands of African-American teachers in New Orleans had a long-term negative impact on the city's black middle class.<sup>187</sup> In addition to African-American teachers not

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<sup>181</sup> Buras, *Charter Schools, Race, and Urban Space: Where the Market Meets Grassroots Resistance*, 38.

<sup>182</sup> Henry, Jr. and Dixon, "Locking the Door Before We Got the Keys': Racial Realities of the Charter School Authorization Process in Post-Katrina New Orleans," 230.

<sup>183</sup> Ibid., 47; "HB121 by Representative Carl N. Crane," Louisiana State Legislature, accessed April 2, 2020, <http://legis.la.gov/legis/BillInfo.aspx?s=051ES&b=ACT35&sbi=y>.

<sup>184</sup> Henry, Jr. and Dixon, "Locking the Door Before We Got the Keys': Racial Realities of the Charter School Authorization Process in Post-Katrina New Orleans," 223.

<sup>185</sup> Buras, *Charter Schools, Race, and Urban Space: Where the Market Meets Grassroots Resistance*, 46-47.

<sup>186</sup> Ibid.; Henry, Jr. and Dixon, "Locking the Door Before We Got the Keys': Racial Realities of the Charter School Authorization Process in Post-Katrina New Orleans," 223.

<sup>187</sup> Andre Perry, "Support for charters in 2020 election comes with a price," The Hechinger Report, Teachers College at Columbia University, December 4, 2019. <https://hechingerreport.org/support-for-charters-in-2020-election-comes-with-a-price>.

being guaranteed jobs in the new system, African-Americans have been shut out of the process of rebuilding New Orleans as a city of charter schools. The city has been accused of having overly complicated and inaccessible charter school application and authorization laws. Members of local African-American communities argue these laws are intentionally designed to preclude them from starting and operating charter schools themselves. They posit that this process is controlled by predominately white, wealthy business interests who are not concerned with African-American student achievement or self-determination for African-American families.<sup>188</sup>

Advocates for charter schools in Louisiana did not hide their awareness that the African-American community was excluded from the policy process. For example, Leslie Jacobs, a New Orleans business leader and school choice advocate, is considered an “architect” of the Recovery School District.<sup>189</sup> She said this a presentation to Florida state government officials in 2010:

So when we took that school away from the school district and put it into the Recovery School District – and I just have to emphasize, this is recovery from academic failure and wasn't in existence before Katrina. In taking it away, you strip the school from that school board. And in doing that, the local policies go away, the collective bargaining agreement goes away . . . There are still people in the minority community angry that we took over the schools and that we disenfranchised them, and I don't think anything we say or do will change that.<sup>190</sup>

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<sup>188</sup> Henry, Jr. and Dixon, ““Locking the Door Before We Got the Keys’: Racial Realities of the Charter School Authorization Process in Post-Katrina New Orleans,” 219-221 and 226-230.

<sup>189</sup> “#5 Leslie Jacobs, Advocate, Educate Now!,” Forbes, Forbes Media LLC, accessed April 3, 2020, <https://www.forbes.com/pictures/lmm45fdek/5-leslie-jacobs-advocate-educate-now/#5492b2ae2e5f>; John Pope, “Forbes called her one of the 7 most powerful educators on the planet. Can you name her?,” The Times-Picayune | The New Orleans Advocate, Georges Media Group, May 10, 2018, [https://www.nola.com/300/article\\_d31b9381-3a34-5a2f-a1aa-1106219b6b43.html](https://www.nola.com/300/article_d31b9381-3a34-5a2f-a1aa-1106219b6b43.html).

<sup>190</sup> “City of Jacksonville Charter Revision Commission Meeting” (transcript, Jacksonville, Florida, January 28, 2010), 8 and 46, <https://www.coj.net/city-council/docs/charterrevisiontranscripts-2010-01-28.aspx>.



Jacobs' comment may not show remorse for the exclusion of teachers and the New Orleans African-American community as a whole, but she does justify the charter school expansion with the pretense that the city's public schools were underperforming. This was a common argument made by advocates of school choice reform in New Orleans, both before and after the hurricane.<sup>191</sup>

It is important to contextualize New Orleans public schools' achievement levels. In the decades following *Brown v. Board of Education* in 1954, New Orleans experienced a mass exodus of white families and a subsequent decrease in capacity for industrialization and economic development. The New Orleans economy relies on tourism and lacks the middle class found in comparable urban cities, even without factoring in the devastation of Hurricane Katrina. This helps explain why New Orleans' disproportionately low-income and African-American public school population has posted lower academic achievement levels than the rest of the state.<sup>192</sup> Still, the situation was exploited by Jacobs and other proponents of charter schools.

In summary, New Orleans' all-charter school system received support from both political parties who wanted to incorporate pro-market principles into public schools. However, the process excluded input from African-Americans, including thousands of teachers who were not factored into the new charter system. While supporters of charter schools in Louisiana said they were concerned with building better schools that served predominately African-American students, those involved in the policymaking process did not incorporate the communities impacted by their decisions. This was to the detriment of African-American students and community members.

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<sup>191</sup> Robelen, "La. Lawmakers OK Plan to Give State Control of Most New Orleans Schools."

<sup>192</sup> Boselovic, "Defining Pre-Katrina New Orleans: the structural transformation of public education in New Orleans and historical memory," 1007-1009.

## Case Study 2: Arizona

Two years after Minnesota created the first charter school in 1992, Arizona legislators contemplated starting a charter school movement of their own. Arizona ranked below average on national standardized tests, and Republican Governor Fife Symington was elected several years prior on an agenda of education reform. There were open calls for reform from families, public figures, and the local media.<sup>193</sup> This was on top of concerns across the country that schools were not equipping high school graduates with the skills needed to compete globally.<sup>194</sup> Charter schools appealed to Governor Symington and two of his Republican colleagues in the state legislature, Lisa Graham Keegan and Tom Patterson. The schools represented an innovative, less bureaucratic alternative to traditional public schools that allowed them to bypass overhauling the state's school system itself.<sup>195</sup>

Initially, Republicans supported legislation that included a wide swath of educational reforms, including a new statewide system for assessing school performance, open enrollment across school districts, expanding preschool for “at-risk” students, and more professional development for teachers. A voucher program and charter school program were also included. Republican crafters of the legislation hoped Democrats would be more willing to accept vouchers if other bipartisan initiatives were couched in the bill.<sup>196</sup>

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<sup>193</sup> Frederick M. Hess and Robert Maranto, “Letting a Thousand Flowers (and Weeds) Bloom: The Charter Story in Arizona,” in *Annual Meeting of the American Educational Research Association* (New Orleans, Louisiana, April 24-28, 2000), 2.

<sup>194</sup> Amanda U. Potterton, “Different Choices: A Public School Community’s Responses to School Choice Reforms,” *Qualitative Report* 23, no. 8 (2018): 1910.

<sup>195</sup> Alden Woods et al., “History of Arizona charter schools: ‘I don’t think we realized what we’d done,’” *The Arizona Republic*, Gannett, December 13, 2018, <https://www.azcentral.com/story/news/local/arizona-education/2018/12/13/history-arizona-charter-schools-how-leaders-got-votes/2015695002>.

<sup>196</sup> Hess and Maranto, “Letting a Thousand Flowers (and Weeds) Bloom: The Charter Story in Arizona,” 6-7.

The voucher program faced staunch opposition from Democrats. They feared it would allow public money to be used to fund students attending religious private schools.<sup>197</sup> Both the voucher and charter school proposals were criticized for threatening to usurp public school funds, exacerbating educational inequality.<sup>198</sup> The legislation was also opposed by the two principle teachers unions in the state, the Arizona Education Association (AEA) and the Arizona Federation of Teachers (AFT). Both expressed concern that vouchers and charter schools would lead to teacher layoffs and the hiring of new, underqualified teachers in their place.<sup>199</sup>

While Democratic Party and teacher union opposition was well-documented, these groups lacked power in school reform negotiations for several reasons. First, Republicans held both the governorship and both chambers of the legislature.<sup>200</sup> Second, Republicans intentionally staked out a hardline position on vouchers to use as a starting point. While some Republicans and business allies publicly stated they would only support legislation with a voucher program, Graham Keegan later said she anticipated charter schools would emerge as a compromise proposal and appeal to voucher opponents as a less-worse option.<sup>201</sup> Third, the AEA was charged by the state attorney general with violating campaign finance law and was forced to pay a fine in a settlement; this decreased the union's political influence.<sup>202</sup> Fourth, Democrats were pressured by the Democratic National Committee to accept the legislation because of its other bipartisan education reform components and because charter schools were becoming more politically popular around the country.<sup>203</sup>

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<sup>197</sup> Woods et al., "History of Arizona charter schools: 'I don't think we realized what we'd done.'"

<sup>198</sup> Hess and Maranto, "Letting a Thousand Flowers (and Weeds) Bloom: The Charter Story in Arizona," 7.

<sup>199</sup> Ibid., 3-4.

<sup>200</sup> Bryan C. Hassel and Michelle Godard Terrell, "The Rugged Frontier: A Decade of Public Charter Schools in Arizona," *Progressive Policy Institute*, June 2004, 9.

<sup>201</sup> Hess and Maranto, "Letting a Thousand Flowers (and Weeds) Bloom: The Charter Story in Arizona," 8-9.

<sup>202</sup> Ibid., 4.

<sup>203</sup> Ibid., 9-10.

These were the circumstances heading into a special legislative session called by Symington several months after the initial legislation failed. New legislation was introduced without the voucher component; Symington hoped it would garner more Democratic support.<sup>204</sup> Viewing vouchers as much worse than charter schools, Democrats and teachers unions were in a precarious situation. Instead of opposing all proposals for school reform, they opted to support charter schools as a compromise position.<sup>205</sup> Despite some grandstanding, more conservative Republican supporters of the original legislation also supported it.<sup>206</sup>

In addition to this change in the legislation, Governor Symington reached out to Armando Ruiz, a former Democratic state legislator with significant connections to the Latinx community in south Phoenix, a Democratic stronghold. Ruiz saw charter schools as a promising tuition-free alternative to public schools for Latinx youth who were at risk of dropping out of high school and getting involved with illegal activities.<sup>207</sup>

This mirrored a movement across the country in which BIPOC groups took notice of charter school support from African-Americans in Minnesota and other early charter school-adopting states. These groups shared a history of marginalization in the education system, inspiring their interest in reform.<sup>208</sup> Latinx communities in particular saw charter schools as a possible space for serving the specific academic needs of English Language Learner (ELL) students and including Spanish language instruction and Latinx heritage and culture as part of the curriculum.<sup>209</sup> This is particularly significant in Arizona, where bilingual language programs are

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<sup>204</sup> Woods et al., “History of Arizona charter schools: ‘I don’t think we realized what we’d done.’”

<sup>205</sup> Hassel and Godard Terrell, “The Rugged Frontier: A Decade of Public Charter Schools in Arizona,” 9.

<sup>206</sup> Hess and Maranto, “Letting a Thousand Flowers (and Weeds) Bloom: The Charter Story in Arizona,” 10.

<sup>207</sup> Woods et al., “History of Arizona charter schools: ‘I don’t think we realized what we’d done.’”

<sup>208</sup> Shane Goodridge, “Tracing the Historical DNA and Unlikely Alliances of the American Charter School Movement,” *Journal of Policy History* 31, no. 2 (April 2019): 294.

<sup>209</sup> Mandrgoc, “Contested Education, Continuity, and Change in Arizona and New Mexico, 1945-2010,” 262.

banned in public schools but allowed in charter schools.<sup>210</sup> There are several examples nationwide of Latinx communities using charter schools as a means of educational self-determination.<sup>211</sup> Ultimately, Ruiz was instrumental in drumming up the Democratic support that enabled the charter school legislation to pass in the special session in June 1994.<sup>212</sup>

Today, Arizona is known as the “Wild West” of charter schools.<sup>213</sup> It has arguably the most relaxed school choice laws in the country.<sup>214</sup> This was Governor Symington’s intention, as he was passionate about deregulating schools and increasing innovation and free market competition in education, even if that meant some schools would struggle in the process. This is also in line with Arizona’s longstanding politically conservative heritage, kept intact by voters who consistently vote Republican in national elections.<sup>215</sup> Crafters of the legislation openly admitted the possibility that some burgeoning charter schools would fail was just part of “that old Wild West adventuresome spirit.”<sup>216</sup>

This unregulated, free market approach to charter schools was a departure from the original conception of charter schools: Al Shanker’s idea for schools that serve students from marginalized backgrounds. Armando Ruiz ultimately founded three charter schools with the explicit purpose of enrolling Latinx at-risk youth. The schools are still operating today, but Ruiz has struggled to make them financially solvent. In contrast, Arizona’s most financially successful

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<sup>210</sup> Kate Mahoney, Jeff MacSwan, and Marilyn Thompson, “The condition of English language learners in Arizona: 2005,” in “The condition of PreK-12 education in Arizona,” *Arizona Education Policy Initiative* (2005): 3.6. <https://files.eric.ed.gov/fulltext/ED509362.pdf>

<sup>211</sup> Guadalupe San Miguel, Jr. and Rubén Donato, “Latino Education in Twentieth-Century America: A Brief History,” in *Handbook of Latinos and Education: Theory, Research, and Practice*, ed. Enrique G. Murillo, Jr. et al. (New York: Routledge, 2010), 43.

<sup>212</sup> Woods et al., “History of Arizona charter schools: ‘I don’t think we realized what we’d done.’”

<sup>213</sup> Potterton, “Different Choices: A Public School Community’s Responses to School Choice Reforms,” 1911.

<sup>214</sup> Hassel and Godard Terrell, “The Rugged Frontier: A Decade of Public Charter Schools in Arizona,” 9.

<sup>215</sup> Hess and Maranto, “Letting a Thousand Flowers (and Weeds) Bloom: The Charter Story in Arizona,” 3.

<sup>216</sup> *Ibid.*, 5.

charter schools are accused of existing primarily as a means for their operators to make substantial profits, using public tax dollars for private financial gain.<sup>217</sup>

In the decades after the initial legislation was passed, Arizona's consistently Republican-controlled state government encouraged the proliferation of charter schools.<sup>218</sup> Critics argue the playing field is not even. Arizona's current governor Doug Ducey has been accused of condoning state financial support of charter schools with disproportionately high numbers of white students. These schools often have political connections to Governor Ducey. Meanwhile, the costs of applying for a charter have increased.<sup>219</sup> From 2014 to 2017, 60 percent of charter school enrollment growth was experienced by just 10 charter school companies, while 35 percent of charter schools saw their enrollment decrease.<sup>220</sup>

These disparities impact the degree to which Latinx students are served by charter schools. Consider these findings from the Arizona Center for Investigative Reporting in 2016:

White and Asian students attend charter schools at a higher rate than Latinos, who make up the greatest portion of Arizona's school-age population. Latino students account for 44 percent of all students in Arizona, but they make up 36 percent of charter school students. White students, who make up 40 percent of the school-age population, account for 48 percent of all charter students . . . when charter

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<sup>217</sup> Alden Woods et al., "First Arizona charter schools: 'Like the Oklahoma Land Rush,' a world with few boundaries," *The Arizona Republic*, Gannett, December 14, 2018, <https://www.azcentral.com/story/news/local/arizona-education/2018/12/14/charter-schools-take-root-arizona-1994-legislation/2015754002>; "Governor Ducey Announces Appointment To The Arizona State Board Of Education," Office of the Governor Doug Ducey, January 17, 2019, <https://azgovernor.gov/governor/news/2019/01/governor-ducey-announces-appointment-arizona-state-board-education>.

<sup>218</sup> Potterton, "Different Choices: A Public School Community's Responses to School Choice Reforms," 1910-1911.

<sup>219</sup> Craig Harris et al., "The rise of big charters in Arizona was fueled by powerful friends," *The Arizona Republic*, Gannett, December 16, 2018, <https://www.azcentral.com/story/news/local/arizona-education/2018/12/16/arizona-rise-big-charter-schools-fueled-powerful-friends/1822430002>.

<sup>220</sup> Curtis Cardine, Dave Wells, and Amy Pedotto, "Red Flags: Overleveraged Debt," *Grand Canyon Institute* (January 9, 2019), 5. [https://grandcanyoninstitute.org/wp-content/uploads/2019/01/Red\\_Flags\\_Overleveraged\\_Properties\\_Jan\\_9\\_2019.pdf](https://grandcanyoninstitute.org/wp-content/uploads/2019/01/Red_Flags_Overleveraged_Properties_Jan_9_2019.pdf).

schools are compared to their neighborhoods and to other nearby schools, data shows that they are more likely to be whiter than the surrounding area, while district schools tend to over-represent Latino students.<sup>221</sup>

In addition to Ruiz's concern that it is expensive to run a charter school in Arizona, there are several other possible reasons why these racial disparities in charter school attendance exist. Many charter schools do not provide free-and-reduced lunch services and/or ELL services found in traditional public schools. In the 2012-2013 school year, less than 50 percent of charter schools used state funding for lunch programs, and only 2 percent of charter schools used state funding for ELL programs. Moreover, some Arizona charter schools ask students' families for financial donations, covering a variety of expenses from participation in athletics to teachers' salaries.<sup>222</sup> BASIS Charter Schools, which boasts arguably the highest academic achievement rankings of any charter school network in the country, is known for only building schools in white, wealthy neighborhoods.<sup>223</sup> Put together, these factors raise a concern that charter schools are harboring "white flight" in the Arizona education system.

From the beginning, the push for charter schools in Arizona came from Republican politicians who wanted more school options that competed with traditional public schools. Democrats and teachers unions reluctantly agreed to charter schools as a compromise to avoid further privatization of education. While a coalition with Democratic Party-aligning Latinx communities was built early on, charter schools in Arizona today serve disproportionately white,

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<sup>221</sup> Griselda Nevarez and Evan Wyloge, "Arizona Charter Schools Lacking Latino Enrollment," Arizona Public Media, Arizona Board of Regents, February 13, 2016, <https://www.azpm.org/p/home-articles-news/2016/2/13/82013-arizona-charter-schools-ethnic-diversity-does-not-reflect-the-state>.

<sup>222</sup> Harris et al., "The rise of big charters in Arizona was fueled by powerful friends;" Monica Alonzo, "Arizona Charter Schools Often Ignore Latino Students and English-Language Learners," Phoenix New Times, Voice Media Group, May 29, 2014, <https://www.phoenixnewtimes.com/news/arizona-charter-schools-often-ignore-latino-students-and-english-language-learners-6462476>.

<sup>223</sup> Ibid.

wealthier students. Latinx students are underrepresented in these schools, which hold some of the highest rankings among charter schools in the country. Like African-Americans in New Orleans, this group was not factored into the sustaining impacts of charter school laws.

## **Conclusion**

After analyzing the history of charter school support in Louisiana and Arizona, it is apparent that legislation creating or expanding charter schools cannot be advanced without bipartisan support. However, charter school support in these two states was primarily driven by Republican politicians with a pro-market ideology. Moreover, teachers unions were opposed to charter schools in both states but lacked the political influence to stop them in any meaningful way. In both states, promises were made that charter schools would adequately serve the needs of students of color. Charter schools received little support from African-Americans in Louisiana and some support from Latinx people in Arizona. In both cases, these communities lacked significant input and were not included as long-term beneficiaries of the policies.

Throughout their nearly 30-year history, charter schools have never existed without controversy. Despite political and financial challenges, the movement perseveres and the numbers for charter schools continue to grow.<sup>224</sup> Less than two months after facing criticism for proposing a reform of the Charter School Program grant, Secretary of Education Betsy DeVos announced that the grant would provide \$65 million to 13 charter school organizations.<sup>225</sup> Meanwhile, Elizabeth Warren and Bernie Sanders were criticized on the campaign trail by liberal

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<sup>224</sup> Phillip Geheb and Spenser Owens, “Charter School Funding Gap,” *Fordham Urban Law Journal* 46, no. 1 (February 2019): 73-76.

<sup>225</sup> Peter Greene, “DeVos Makes New Charter School Grants From Troubled Fund,” *Forbes*, Forbes Media, LLC, April 11, 2020. <https://www.forbes.com/sites/petergreene/2020/04/11/devos-makes-new-charter-school-grants-from-troubled-fund/#6d1b35dc7298>.



supporters of charter schools, including African-American activists who argued charter schools are the best option to address racial inequality in education.<sup>226</sup> This suggests that charter schools will continue to receive support from diverse groups of people for the foreseeable future.

It is worth continuing to examine who is behind state-level charter school laws and who is excluded from the policymaking process. This will provide insight into whether charter schools are a long-term solution to addressing educational inequities, or whether they perpetuate or even exacerbate these inequities. Charter schools are likely here to stay, so they should not be viewed as a recent experimental trend in education that only affects a small number of students. Abstract debates on the merits of charter schools are only valuable if they include ideas for how charter schools can address the needs of the country's most underserved students.

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<sup>226</sup> Kevin Carey, "The Demise of the Great Education Saviors," *The Washington Post Magazine*, Nash Holdings, March 18, 2020, <https://www.washingtonpost.com/magazine/2020/03/18/charter-schools-testing-were-supposed-save-american-education-now-theyve-run-out-political-steam-what-went-wrong/?arc404=true>.

## Chapter 3

### **Expanding School Funding Discourse to Include the Effects of Mass Incarceration on Educational Outcomes**

The concept of publically-funded schools existed in the US as early as the colonial era. Since the founding of the public education system, there have been fierce public debates over how schools should be funded and how much money is necessary to adequately teach children. This issue received even more public attention during the COVID-19 pandemic, during which there was an unusual level of agreement throughout the country that school funding is in jeopardy.

About half of school funding comes from states. During the beginning of the pandemic, once businesses and public places began shutting down and large numbers of people were laid off, state governments braced for a dramatic decrease in revenue.<sup>227</sup> Funding tied to student enrollment also fell significantly. This is because many students did not attend virtual or hybrid school in spring 2020 and during the 2020-2021 school year, causing these students to be dropped from enrollment.<sup>228</sup>

In March 2020, federal funding was set aside in the Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act, to alleviate school district budget shortfalls. Congress committed billions more in the March 2021 American Rescue Plan Act,

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<sup>227</sup> Cory Turner, “America’s school funding crisis: Budget cuts, rising costs and no help in sight,” *MPR News*, Minnesota Public Radio, October 23, 2020, <https://www.mprnews.org/story/2020/10/23/npr-americas-school-funding-crisis-budget-cuts-rising-costs-and-no-help-in-sight>.

<sup>228</sup> Shawn Hubler, Kate Taylor, and Amelia Nierenberg, “Public Schools Face Funding ‘Death Spiral’ as Enrollment Drops,” *New York Times*, The New York Times Co., December 22, 2020, <https://www.nytimes.com/2020/12/22/us/public-schools-enrollment-stimulus.html>.

colloquially known as the COVID-19 stimulus package, to give schools a lifeline until 2024.<sup>229</sup> However, educators and policymakers are still engaged in a dialogue on how much funding will be needed to address students' needs during and after the pandemic.<sup>230</sup> This ranges from access to technology to remedial literacy to support for the social-emotional health of students. These issues threaten to disproportionately hurt students of color and students from low-income families, exacerbating inequities that already exist in education. There is also concern about the long-term sustainability of school funding. Once federal support runs out, schools must figure out how to continue to meet the needs of their students. Meanwhile, state governments and school districts continue to struggle to answer how much money is needed to improve the outcomes of students, and how exactly this money should be spent to help students the most efficiently.<sup>231</sup>

Debates over school funding during the pandemic have given immediacy to an unanswered question that has existed in education policy for decades. Do schools, especially high-poverty schools, need more funding than they have now? And if they receive more funding, how should it be spent, and will it result in better student outcomes?

After a literature review surveying these overarching topics, this paper will examine the state of New York as a case study. New York has the highest per-pupil school funding in the country, yet some of the biggest funding inequities and learning gaps, particularly in New York City. This case study will reveal that a degree of redistributive school funding is necessary to

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<sup>229</sup> Zahava Stadler and Victoria Jackson, "The COVID-19 Stimulus Money Won't Last Forever. Here's What's Next for Schools," *Education Week*, Education Week, April 26, 2021, <https://www.edweek.org/policy-politics/opinion-the-covid-19-stimulus-money-wont-last-forever-heres-whats-next-for-schools/2021/04>.

<sup>230</sup> Hubler, Taylor, and Nierenberg, "Public Schools Face Funding 'Death Spiral' as Enrollment Drops."

<sup>231</sup> Emma Dorn, Bryan Hancock, Jimmy Sarakatsannis, and Ellen Viruleg, "COVID-19 and learning loss – disparities grow and students need help," *McKinsey*, McKinsey and Company, December 8, 2020, <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/covid-19-and-learning-loss-disparities-grow-and-students-need-help>.

provide a foundational education for students from marginalized backgrounds. However, there are greater societal issues beyond education reform that need to be addressed for meaningful progress to be made.

After the analysis of New York's school funding, the paper will discuss the issue of mass incarceration and its effect on student outcomes, both in New York and nationwide. The argument will be made that reforming and, in some cases, divesting from the criminal justice system should be framed as a "school funding" issue. This can provide a long-term source of funding for high-poverty schools while addressing structural poverty and racial inequality in a meaningful way.

## **Literature review**

The relationship between school funding and student outcomes has been debated for decades. There is still fierce disagreement among academics, policymakers, and the general public on how much money is needed to provide a quality public education for young people. When examining low-income areas that receive additional funding, the next question is how this funding should be used most effectively. In other words, is school funding causally related to significantly different student outcomes?

First, it is important to outline how school funding works in the US. Public school funding comes from local, state, and federal sources. In 2016, 45 percent of school revenue was from local governments, 47 percent was from state governments, and 8 percent was from the

federal government.<sup>232</sup> Public education is not a right explicitly guaranteed in the Constitution.<sup>233</sup> This is why education has been considered a local issue since before the founding of the US as a nation.

The concept of the property tax can be traced back to ancient Greece and Rome. It was the most tangible sign of wealth that could be easily traced and taxed for public services. This tax was adopted by Protestant churches shortly after the Reformation to fund religious education in neighborhoods schools. The idea was that society would be better off if everyone had access to a foundational education, free-of-charge. This system made its way to England and eventually the American colonies, both of which expanded curricular offerings to include grammar and other secular school subjects.<sup>234</sup>

As more schools were built, they were arranged in school districts - networks of schools led by a local, centralized, set of leaders. The property tax fueled the proliferation of public schools in the US at a rate Europe had never seen.<sup>235</sup> This system goes hand-in-hand with the common understanding of education in the US as an issue best left to states and localities. Not only is this what the constitution prescribes; states and school districts are widely believed to have a more intimate understanding of community educational needs than the federal government.<sup>236</sup>

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<sup>232</sup> Michael Leachman and Eric Figueroa, "K-12 School Funding Up in Most 2018 Teacher-Protest States, But Still Well Below Decade Ago," Center on Budget and Policy Priorities, March 6, 2019, <https://www.cbpp.org/sites/default/files/atoms/files/3-6-19sfp.pdf>.

<sup>233</sup> Michael J. Hoffman, Richard L. Wiggall, Mary I. Dereshiwsy, and Gary L. Emanuel, "State School Finance System Variance Impacts on Student Achievement: Inadequacies in School Funding," *eJournal of Education Policy*, (Fall 2013): 1, <https://files.eric.ed.gov/fulltext/EJ1158691.pdf>.

<sup>234</sup> Billy D. Walker, "The Local Property Tax for Public Schools: Some Historical Perspectives," *Journal of Education Finance* 9, no. 3 (Winter 1984): 265-267.

<sup>235</sup> Ibid., 265-270.

<sup>236</sup> Jeffrey A. Mirion, "Rethinking Redistribution," *National Affairs* 6 (Winter 2011): 84.

Up until the first part of the 20th century, public schools relied on local revenue for about 80 percent of their total funding. Today, that number has been cut nearly in half. This is not because of more federal funding, which has never more than 13 percent of nationwide school funding in a given year.<sup>237</sup> In the 1972 case *San Antonio Independent School District v. Rodriguez*, the Supreme Court ruled that inequities in local property tax school funding did not warrant intervention from the federal government. The Court disagreed that this was a violation of the Equal Protection Clause under the Fourteenth Amendment, arguing instead that a right to public education is not explicitly mentioned anywhere in the Constitution.<sup>238</sup> The Court furthered that proving a hindrance of “some identifiable quantum of education” was needed to spur federal involvement. In other words, funding inequities would need to impede free speech rights or another right already enshrined in the Constitution.<sup>239</sup>

Instead of going this route, advocates turned their attention to state governments, citing state constitutions’ equal protection or equity clauses in their cases. Like the Supreme Court, state courts have been reluctant to rule funding disparities as an equity violation. First, this would call into question other government funded programs that select their beneficiaries based on socioeconomic status, including longstanding welfare programs like Medicaid. Second, it would inevitably result in redirecting wealthier districts’ funding to poorer districts. This would likely anger parents and community stakeholders living in wealthier districts, who would argue that they are entitled to keep local funds in their children’s schools.<sup>240</sup>

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<sup>237</sup> Matthew M. Chingos and Kristin Blagg, “Do Poor Kids Get Their Fair Share of School Funding?,” Urban Institute, May 2017, [https://www.urban.org/sites/default/files/publication/90586/school\\_funding\\_brief.pdf](https://www.urban.org/sites/default/files/publication/90586/school_funding_brief.pdf).

<sup>238</sup> Hoffman et al., “State School Finance System Variance Impacts on Student Achievement,” 1.

<sup>239</sup> Arthur E. Wise, “Toward equality of educational opportunity,” *The Phi Delta Kappan* 100, no. 8 (May 2019): 9.

<sup>240</sup> Bonnie A. Scherer, “Footing the Bill for a Sound Basic Education in New York City: The Implementation of Campaign for Fiscal Equity v. State,” *Fordham Urban Law Journal* 32, no. 5 (2005): 105-6.

Funding advocates have had more success appealing to their state constitutions' language on education. Every state constitution in the US guarantees free public education, with many states setting a higher bar for a foundational and rigorous education.<sup>241</sup> Emphasizing measurable differences in funding disparities on student outcomes while invoking state constitutional language has produced more successful litigation than abstract legal debates on equity. Usually, plaintiffs argue that school districts should be guaranteed a certain minimum funding amount after combining local, state, and federal sources. If this amount is not met, it may be legal grounds for increasing state funding support. For example, in 1989, the Kentucky state Supreme Court ruled in *Rose v. Council for Better Education, Inc.* that high-poverty school districts in the state were inadequately funded.<sup>242</sup> This spurred an increase of over \$1.5 billion in state funding, which largely benefitted high-poverty districts.<sup>243</sup> Today,

In addition to reducing gaps between school districts with disparities in funding from local property taxes, states may prioritize funding for school districts in rural areas, school districts with more students receiving special education services, or other factors they deem significant.<sup>244</sup> Meanwhile, federal funding tends to prioritize low-income school districts, such as the Title I program, which provides extra funds to spend on low-achieving students who are in poverty.<sup>245</sup> This patchwork of school funding on multiple levels of government, plus the overall

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<sup>241</sup> Scherer, "Footling the Bill for a Sound Basic Education in New York City," 106 and "The State Role in Education Finance," NCSL, National Conference of State Legislatures, n.d., accessed August 2, 2021, <https://www.ncsl.org/research/education/state-role-in-education-finance.aspx>.

<sup>242</sup> *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Kentucky Supreme Court 1989). <https://law.justia.com/cases/kentucky/supreme-court/1989/88-sc-804-tg-1.html#:~:text=In%20its%20judgment%2C%20the%20trial,183%20of%20the%20Kentucky%20Constitution.>

<sup>243</sup> Scherer, "Footling the Bill for a Sound Basic Education in New York City," 111.

<sup>244</sup> Chingos and Blagg, "Do Poor Kids Get Their Fair Share of School Funding?"

<sup>245</sup> Mark Dynarski and Kirsten Kainz, "Why federal spending on disadvantaged students (Title I) doesn't work," *Brookings Institution Evidence Speaks Reports* 1, no. 7 (November 2015): n.p. <https://www.brookings.edu/wp-content/uploads/2016/07/Download-the-paper-2.pdf>

emphasis on local and state funding, fuels debates over whether schools should be funded differently (and how differently).

Compared to other more developed countries, which are more likely to supervise funding on the national level and redistribute funding, the US is somewhat unique in the degree to which “local wealth” influences school funding.<sup>246</sup> Proponents of reform argue that income, wealth, and zip code should not determine a student’s educational experience, especially when these factors are outside of a child’s control. Local school funding inequities disproportionately affect students of color, heightening the demand that states and the federal government target school districts with students from marginalized backgrounds.<sup>247</sup>

The most obvious counterpoint to this perspective is that money should not be redistributed by the government. But most contemporary conservative scholars are hesitant to argue that no redistribution is justified for school funding or other anti-poverty programs. Even conservative politicians avoid critiquing long-established school funding programs like Title I.<sup>248</sup> Instead, scholars using a lens of limited government argue that the emphasis should be placed on whether existing funds are spent efficiently, not whether there should be more funding.<sup>249</sup>

Another argument against simply increasing funding is redirecting money to charter schools. Charter schools have existed in the US for nearly 30 years. They receive funding from public and private sources, are privately operated, and are exempt from many requirements that public schools are held to so they may experiment with new curriculum and teaching strategies. School choice advocates argue that charter schools spend public funds more efficiently and

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<sup>246</sup> Bruce J. Biddle and David C. Berliner, “Unequal School Funding in the United States,” *Educational Leadership* 59, no. 8 (May 2002): 50.

<sup>247</sup> Ivy Morgan and Ary Amerikaner, “Finding Gaps: An Analysis of School Funding Equity Across the U.S. and Within Each State,” The Education Trust, February 2018, <https://files.eric.ed.gov/fulltext/ED587198.pdf>.

<sup>248</sup> Dylan Matthews, “Ben Carson accidentally stumbled on a great idea for improving education,” Vox, Vox Media, October 30, 2015, <https://www.vox.com/2015/10/30/9643636/ben-carson-education-funding>.

<sup>249</sup> Miron, “Rethinking Redistribution,” 70-71.



creatively. Opponents argue that charter schools do not produce better results and siphon essential public funds from traditional public schools. This is because funding is provided from state and local taxes on a per-pupil basis, so when a student transfers from a public school to a nearby charter school, that funding follows them to the charter school.<sup>250</sup>

Proponents of increased funding respond to conservative critics by arguing that calls for more efficient spending are a façade for more insidious classist and racist beliefs. They charge that those who do not prioritize more equitable funding accept a certain degree of inequality in society, or even justify it with rationales about wealthier and “hard-working” families deserving better schools. They may also subscribe to theories about the “culture of poverty” or a relationship between race and intelligence, which school funding critics may cite to further diminish concerns about providing more equitable funding for poor students and students of color.<sup>251</sup>

The term “equity” – a fundamental concept in public policy – takes on new meaning in the realm of school funding. Horizontal equity is “equal treatment of equals” – ensuring that similar districts with similar numbers and demographics of students receive similar funding. Vertical equity is “unequal treatment of unequals” – providing more funding for districts with higher needs, such as districts with a higher number of students in poverty or students with disabilities. Policymakers struggle to determine the relevant criteria that make school districts “similar” and thus deserving of similar funding, which makes it even more difficult to agree on appropriate levels of funding.<sup>252</sup>

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<sup>250</sup> Vergari, “The Politics of Charter Schools,” 21-23 and 31-32 and Marcus A. Winters, “Measuring the effect of charter schools on public school student achievement in an urban environment: Evidence from New York City,” *Economics of Education Review* 31 (2012): 294.

<sup>251</sup> Biddle and David C. Berliner, “Unequal School Funding in the United States,” 51.

<sup>252</sup> Robert K. Toutkoushian and Robert S. Michael, “An Alternative Approach to Measuring Horizontal and Vertical Equity in School Funding,” *Journal of Education Finance* 32, no. 4 (Spring 2007): 396.

Another way of framing this debate is inputs versus outputs. Debates over whether more state and federal funding is needed are predicated on how this money will be spent and what the student outcomes might be. Funding advocates argue that more money is necessary to provide nicer school facilities, newer technology, more school supplies and other resources, higher-paid teachers, and lower class sizes. These inputs are assumed to result in better student outcomes.<sup>253</sup> Some scholars challenge whether these reforms actually produce better outputs - indicators of student achievement like higher standardized test scores, graduation rates, and rates of college admission.<sup>254</sup>

The research varies widely on the issue of whether more funding for “inputs” result in higher “outputs,” but they err on the side of a positive relationship. For example, Baker, Farrie, and Sciarra (2016) assessed whether increasing school funding narrows the racial achievement gap. The authors found that school districts receiving extra state and federal support tend to have more teachers, lower class sizes, and higher teacher salaries. This suggests that districts spend money on the programs they promise to allocate money towards. Moreover, low-income schools that used the money to attract highly-qualified teachers improved students’ standardized tests scores. However, the authors could not substantiate their initial thesis that racial gaps in test scores would be reduced by implementing the specific reforms they studied.<sup>255</sup>

Hoffman (2013) looked at Arizona schools’ math scores between 2007 and 2012. Schools that increased their funding by 10 to 15 percent by heightening local tax revenue were more likely to hire additional teachers, pay teachers more, expand professional development opportunities, reduce class sizes, expand their use of technology, and make physical

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<sup>253</sup> Hoffman et al., “State School Finance System Variance Impacts on Student Achievement,” 3 and 6.

<sup>254</sup> Ibid.

<sup>255</sup> Bruce D. Baker Danielle Farrie, and David G. Sciarra, “Mind the Gap: 20 Years of Progress and Retrenchment in School Funding and Achievement Gaps,” *Educational Testing Service* (2016): 1-5.

improvements to school facilities. These schools also experienced an increase in math standardized test scores. Hoffman uses this evidence to argue that states should offer more funding to high-poverty school districts. He also reasons that state funding should be consistent, sustainable, and long-term in scope. This will ensure that schools have sufficient time and resources to improve learning conditions well into the future and make necessary adjustments as needed.<sup>256</sup>

In the early 1990s, the Kansas state legislature voted to “refinance” state education funding, meaning they took a more concerted effort to divert funds towards high-poverty school districts. Schools received more funding for bilingual education, vocational training, and other programs designed for “at-risk” students. Deke (2003) found that a 20 percent increase in state funding at a school increased the likelihood that the school’s students went on to college by 5 percent. He also pointed out that individuals who attend college tend to garner significantly more lifetime earnings than those who do not go to college. Thus, Deke makes the argument that increasing school funding is a worthwhile investment in students’ futures.<sup>257</sup>

Neymotin (2010) used more recent data in Kansas to test Deke’s conclusion. She found only a weak correlation between extra state funding and graduation rates. She pointed out that typical reforms like reducing class sizes and hiring more teachers were often connected to improve student outcomes, but that funding was sometimes used for other school district political priorities. In other words, funding was not always allocated toward what it was supposed to be spent on. Neymotin also posited that administrative leadership and family involvement are

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<sup>256</sup> Michael John Hoffman, “Connecting Voter-Approved Budget-Limit Exemptions and Student Achievement: Inequities in School Funding” (dissertation, Northern Arizona University, 2013), ii, 192-3, and 203.

<sup>257</sup> John Deke, “A study of the impact of public school spending on postsecondary educational attainment using statewide school district refinancing in Kansas,” *Economics of Education Review* 22 (2003): 275-277 and 284.

important contributors to student outcomes, but they are not often included in school funding debates.<sup>258</sup>

Chingos (2012) examined a variety of statewide studies on whether reducing class sizes increases academic achievement. The results are mixed, with many students showing little or no measurable improvements. Chingos suggests that slight class size increases have a negligible negative effect on student learning, representing a cost-saving measure with little risk. However, the author admits that class size reductions have not been compared alongside other school reforms to see which options are the best use of increased funding.<sup>259</sup>

Dynarski (2017) examined a short-term federal program under No Child Left Behind called School Improvement Grants that provided extra funding to the country's lowest-performing schools. The funding was used for a variety of changes, including teaching training and curricular revisions. Only minimal, short-term improvements in student outcomes were measured at schools that received the grants. The author speculates that if the promise of additional funding was more long-term, it would ensure more improvement in struggling schools over time, as teachers and administrators would allocate the money to more meaningful reforms. He gives two examples of states which fundamentally changed their formula for awarding additional funding, resulting in more years of school completed and higher average earnings over the course of students' lifetimes.<sup>260</sup>

There is a general sense in the literature that more funding for high-poverty school districts will be spent on common-sense reforms like better-paid teachers and smaller class sizes.

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<sup>258</sup> Florence Neymotin, "The Relationship between School Funding and Student Achievement in Kansas Public Schools," *Journal of Education Finance* 36, no. 1 (Summer 2010): 88-89 and 106-107.

<sup>259</sup> Matthew M. Chingos, "Class Size and Student Outcomes: Research and Policy Implications," *Journal of Policy Analysis and Management* 32, no. 2 (2013): 411-412.

<sup>260</sup> Mark Dynarski, "It's Not Nothing: The Role of money in improving education," Brookings Institution, March 2, 2017, <https://www.brookings.edu/research/its-not-nothing-the-role-of-money-in-improving-education>.

However, debates persist over how much funding these school districts are legally and ethically obligated to receive, as well as how much of a difference this will actually make. Nowhere is this more true than in New York, both in New York City and statewide.

### **Case Study: New York**

In 2020, New York City allocated an average of \$28,808 per pupil per year. This includes administrative costs like “pension obligations and debt service.”<sup>261</sup> Across the state of New York, the average per pupil funding figure was \$24,040 in 2018, the most recent year for which this statistic is available. This places New York as the state with the highest level of annual school funding.<sup>262</sup> It is more than twice the national average of \$12,612.<sup>263</sup>

There are several reasons for this high level of funding. The most obvious is New York’s population itself; there are about 2.6 million students in the state.<sup>264</sup> This includes more than 1 million students in New York City – the nation’s largest public school district.<sup>265</sup> Beyond population, New York spends more money to address the needs of students in poverty and

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<sup>261</sup> Reema Amin, “NYC spends a record \$28K per student, but the state is footing a smaller portion of that bill,” Chalkbeat New York, Chalkbeat, January 27, 2020, <https://ny.chalkbeat.org/2020/1/27/21121084/nyc-spends-a-record-28k-per-student-but-the-state-is-footing-a-smaller-portion-of-that-bill>.

<sup>262</sup> Geoff Rosenberger, “In New York, do we get what we pay for in education?,” Rochester Beacon, Rochester Beacon Inc., October 26, 2020, <https://rochesterbeacon.com/2020/10/26/in-new-york-do-we-get-what-we-pay-for-in-education>, and Jim Malatras, “By the Numbers: Uneven Distribution of Education Aid within Big 5 School Districts in New York State,” Rockefeller Institute of Government, November 14, 2018, [https://rockinst.org/wp-content/uploads/2018/11/11-13-18-School-Spending-in-NYS\\_FINAL.pdf](https://rockinst.org/wp-content/uploads/2018/11/11-13-18-School-Spending-in-NYS_FINAL.pdf), 3.

<sup>263</sup> Ian Kingsbury, “Even After Aid Cut, New York Will Spend Most on Education,” *Empire Center*, Empire Center for Public Policy, Inc., September 8, 2020, <https://www.empirecenter.org/publications/even-after-aid-cut-new-york-will-spend-most>.

<sup>264</sup> Joseph Spector, “Why school funding in New York is still a major fight,” Democrat and Chronicle, Gannett Co., Inc., March 20, 2019, <https://www.democratandchronicle.com/story/news/politics/albany/2019/03/20/why-school-funding-new-york-still-major-fight/3139023002/>.

<sup>265</sup> Michael A. Rebell and Jessica R. Wolff, “Students’ Constitutional Right to a Sound Basic Education: New York State’s Unfinished Agenda. Part 1. A Roadmap to Constitutional Compliance Ten Years after “CFE v. State,” Campaign for Educational Equity, Teachers College, Columbia University, November 2016, 6 and <https://eric.ed.gov/?id=ED573134> and Malatras, “By the Numbers,” 3.

students of color. About 74 percent of NYC public school students are in poverty, and about 85 percent are students of color.<sup>266</sup> Over half of K-12 students in New York state are students of color.<sup>267</sup> While New York City is known internationally as a symbol of wealth and prosperity, it is also deeply segregated by racial and class lines, with some neighborhoods in extreme poverty.<sup>268</sup> This has inspired demands for more state funding to benefit students from marginalized backgrounds, particularly in New York City.

There are several notable New York state court cases on the topic of education funding. *Levittown Union Free School District v. Nyquist* (1982) and *Reform Educational Financing Inequities Today (R.E.F.I.T.) v. Cuomo* (1993) both found that funding inequities were not inherently unconstitutional based on equity claims if students were provided with enough funding for a “sound basic education.”<sup>269</sup> Since these two cases, several court cases have featured the now-defunct interest group Campaign for Fiscal Equity as a plaintiff. In 1995, the organization convinced the state Court of Appeals to define “sound basic education” as “the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and serving on a jury.” This was later expanded to include concrete educational inputs, including adequate instruction in core academic disciplines, sufficiently-trained teachers in these subjects, and proper physical school

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<sup>266</sup> “School Diversity in NYC,” New York City Council, no date, Accessed April 13, 2021, <https://council.nyc.gov/data/school-diversity-in-nyc/#:~:text=While%2074%25%20of%20students%20city,specialized%20high%20schools%20experience%20poverty.>

<sup>267</sup> Ray Domanico, “A Statistical Profile of New York’s K-12 Educational Sector: Race, Income, and Religion,” Manhattan Institute, February 2020, <https://media4.manhattan-institute.org/sites/default/files/statistical-profile-nyc-educational-sector-RD2.pdf>, 8.

<sup>268</sup> Tom Koch and Ken Denike, “A Geographical Perspective on Inequality: The New York City School Funding Controversy,” *Journal of Geography* 102 (2003): 194 and “School Diversity in NYC.”

<sup>269</sup> Scherer, “Footnote the Bill for a Sound Basic Education in New York City,” 116.

infrastructure and supplies, in addition to the more commonly measured outputs of state standardized test scores and graduation rates.<sup>270</sup>

In 2006, the state Supreme Court ruled that many school districts with high numbers of students in poverty and students of color were not receiving enough funding to provide students with a “sound basic education” that prepared them for life after high school.<sup>271</sup> The following year, the state legislature responded by increasing state education funding by \$5.4 billion for New York City and \$4 billion for the rest of New York, to be provided over four years. Soon after this guarantee, the Great Recession hit, causing major cuts in education spending and the timeline for much of the nearly \$10 billion to be pushed back.<sup>272</sup> This is representative of funding levels across the country, as 29 states had lower state education funding in 2015 than in 2008.<sup>273</sup>

Shifting to the present day, funding advocates argue that school districts are still legally entitled to more than \$4 billion in funding that has not been provided since 2007. Governor Andrew Cuomo argues that school districts are not entitled to additional funding beyond what is already provided in state budgets. He has also openly questioned whether simply increasing funding will make significant improvements in student outcomes, and he has expressed concern that increasing state funding will inhibit the legislature’s ability to balance the budget, which he sees as a greater priority.<sup>274</sup>

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<sup>270</sup> Ibid., 117.

<sup>271</sup> Rebell and Wolff, “Students’ Constitutional Right to a Sound Basic Education,” 6-8.

<sup>272</sup> Ibid., 9.

<sup>273</sup> Michael Leachman, Kathleen Masterson, and Eric Figueroa, “A Punishing Decade for School Funding,” Center on Budget and Policy Priorities, November 29, 2017, <https://www.cbpp.org/sites/default/files/atoms/files/11-29-17sfp.pdf>.

<sup>274</sup> Anna Gronewold, “Is CFE case over? Even Cuomo foes say, ‘sort of.’,” Politico, Capitol News Company, January 11, 2019, <https://www.politico.com/states/new-york/albany/story/2019/01/11/is-cfe-case-over-even-cuomo-foes-say-sort-of-784670>.

New York City’s funding fortune changed with the passing of the federal COVID-19 stimulus package in March 2021. The city will receive \$6.9 billion in education funding from the legislation over the next three years, which amounts to about \$7,200 per student. The purpose of this funding is to address learning gaps exacerbated during the pandemic. Education leaders in the city have advocated for expanding pre-K and helping schools pay debts caused by declining enrollment. Beyond this, there is still much to be determined in terms of how this significant amount of money will be spent.<sup>275</sup>

There are several recently-published studies on student achievement in New York City’s schools. One study released in March 2021 by scholars at the Research Alliance for New York City Schools at New York University found a significant increase in graduation rates and decrease in dropout rates over a span of 15 years. This was attributed to closing low-performing schools; opening smaller schools with more personalized curriculum to replace them; and training teachers to raise their expectations of students, particularly students of color. However, school segregation along racial and socioeconomic lines persists, as do achievement gaps between white students and students of color.<sup>276</sup>

Domanico (2020) confirmed that recent gains have been made in New York City’s schools. Standardized test scores in the city meet or exceed the state average. However, there are significant gaps between schools, particularly in the Bronx, which has a high percentage of African-American and Latino students. The author specifically notes that these students still post lower test scores than their white counterparts, suggesting “systemic racism” as a contributing

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<sup>275</sup> Reema Amin, “NYC Schools to get Billions of new dollars under state budget deal,” Chalkbeat New York, Chalkbeat, April 7, 2021, <https://ny.chalkbeat.org/2021/4/7/22372087/nyc-schools-to-get-billions-of-new-dollars-under-state-budget-deal>.

<sup>276</sup> “Better Evidence for Better Schools: Insights from the First 10 Years of the Research Alliance for New York City Schools,” The Research Alliance for New York City Schools at New York University, March 2021, [https://steinhardt.nyu.edu/sites/default/files/2021-03/Better\\_Evidence\\_Brief.pdf](https://steinhardt.nyu.edu/sites/default/files/2021-03/Better_Evidence_Brief.pdf), 2-9.



factor. The author advocates for more state funding to support the district’s lowest-performing schools.<sup>277</sup>

Lynch and Mader (2021) reviewed New York City schools over the past 20 years. They found that chronic absenteeism decreased and graduate rates increased during this time. “College readiness rates,” a measurement determined by college entrance exam scores and performance in advanced classes, also increased, even for students in high-poverty schools. The authors cite the Framework for Great Schools as a major contributor to the improvements. This is a framework adopted by Mayor Bill de Blasio’s administration that increases the emphasis on meeting students’ holistic needs and strengthening relationships between schools, families, and wider communities. However, gaps in graduation rates, standardized tests scores, and college readiness persist when comparing white students to African-American and Latinx students. This is also true for schools with wider gaps of economic inequality.<sup>278</sup>

Overall, the evidence suggests that more funding is helpful in improving student outcomes, particularly for low-income students and students of color. More research is needed on how the billions of dollars that will be injected into New York City schools over the next several years can be most effectively spent. The state will also need to establish a long-term plan to fix the unfunded mandate of providing adequate funding needed to ensure a “sound basic education” for all students. One federal funding tied to the pandemic recovery ends in 2024, the state will have to look at other funding sources.

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<sup>277</sup> Ray Domanico, “NYC Student Achievement: What State and National Test Scores Reveal,” Manhattan Institute, March 2020, <https://media4.manhattan-institute.org/sites/default/files/nyc-student-achievement-RD.pdf>, 5-6 and 17.

<sup>278</sup> Tom Liam Lynch and Nicole Mader, “Equity Means All, Not Some: Lessons from the Past 20 Years of Education Reform in New York City, and What Should Come Next,” The New School Center for New York City Affairs, April 2021, [https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/608041116d3c1f6f628635b7/1619018009377/April19\\_FinalReport\\_IS.pdf](https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/608041116d3c1f6f628635b7/1619018009377/April19_FinalReport_IS.pdf), 14-16.

Moreover, politicians and school officials should consider the spillover effects that addressing other societal issues would have on education outputs. While school funding is positively related with student achievement, it is less clear whether a certain amount of money is needed to make a significant difference in these schools. Or, is there simply no amount of school funding from the state or federal government that can meaningfully address systemic issues like racial and economic inequality? This leads to the next section, which addresses a public policy area that is often excluded from the school funding debate, despite its ramifications for students in New York and across the country.

### **Mass incarceration and school funding**

Discussions on how to effectively allocate and spend school funding are essential in a situation like that in New York City, which will soon receive billions of federal dollars. However, it is also important to look beyond school funding to other societal issues. Discussing school funding in a vacuum ignores the root causes for why inequities in funding and student achievement exist in the first place. Long-term solutions to institutional racism and structural poverty require more than increased funding; they require fundamental change.<sup>279</sup> While this is a daunting task, it is relevant to the issue of education reform.

Mass incarceration is one example of such an issue. There are over 2.1 million people in the US who are in jail or prison.<sup>280</sup> About 7.7 million Americans are estimated to have been imprisoned at some point in their life.<sup>281</sup> The US has the highest incarceration rates of any

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<sup>279</sup> Jonathan Giftos, Andreas Mitchell, and Ross MacDonald, “Medicine and Mass Incarceration: Education and Advocacy in the New York City Jail System,” *AMA Journal of Ethics* 19, no. 9 (September 2017): 917.

<sup>280</sup> Mathew J. Creighton and Kevin H. Wozniak, “Are Racial and Educational Inequities in Mass Incarceration Perceived to be a Social Problem? Results from an Experiment,” *Social Problems* 66 (2019): 485.

<sup>281</sup> Terry-Ann Craigie, Ames Grawert, and Cameron Kimble, “Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality,” Brennan Center for Justice at New York

country in the world – about 5 percent of the world’s total population but 25 percent of the world’s incarcerated population.<sup>282</sup> People of color, people in poverty, people with low levels of education, and people struggling with severe mental illness are all disproportionately represented in this population.<sup>283</sup>

Advocates for prison reform argue that mass incarceration is a modern form of slavery or state oppression against African-Americans and other marginalized groups.<sup>284</sup> Michelle Alexander influentially referred to mass incarceration as “The New Jim Crow” – a legally-  
condoned means of racial segregation and oppression.<sup>285</sup> Mass incarceration went up dramatically during the War on Drugs, which began in 1982 during the Reagan administration and featured strict sentencing and enforcement for drug use, particularly crack cocaine in black communities.<sup>286</sup>

The US incarcerated population has increased exponentially – from about 300,000 to over 2 million – in the 30 years since the War on Drugs.<sup>287</sup> This was despite a decrease in crime rates during the 1990s and early 2000s.<sup>288</sup> Even today, people of color are disproportionately represented in incarcerated populations. About 1 in 100 adults is incarcerated, but this includes 1 in 15 African-American men and 1 in 36 Hispanic-American men. There are a variety of reasons for this institutional racism, including the legacy of slavery, Jim Crow, and other racially-

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University School of Law, September 15, 2020, [https://www.brennancenter.org/sites/default/files/2020-09/EconomicImpactReport\\_pdf.pdf](https://www.brennancenter.org/sites/default/files/2020-09/EconomicImpactReport_pdf.pdf), 10.

<sup>282</sup> Katayoon Majd, “Students of the Mass Incarceration Nation,” *The Howard Law Journal* 54, no. 2 (2011): 345.

<sup>283</sup> Creighton and Wozniak, “Are Racial and Educational Inequities in Mass Incarceration Perceived to be a Social Problem?,” 485.

<sup>284</sup> Jasmine Gripper and Erin George, “Schools Not Jails: How Educational Racism Fuels Mass Incarceration in New York,” *The Alliance for Quality Education*, January 2019, [http://www.aqeny.org/wp-content/uploads/2019/01/AQEschoolsnotjails\\_FINAL.pdf](http://www.aqeny.org/wp-content/uploads/2019/01/AQEschoolsnotjails_FINAL.pdf), 6.

<sup>285</sup> Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010), 2.

<sup>286</sup> *Ibid.*, 5-6.

<sup>287</sup> *Ibid.*

<sup>288</sup> Miriam Edwin, “From Mass Incarceration to Mass Education: Fostering Collaboration Between State Prisons and State Universities,” *CUNY Academic Works Dissertations, Theses, and Capstone Products* (May 2018): 5.

discriminatory laws in US history; gaps in income, wealth, and economic opportunities; and educational inequalities.<sup>289</sup> The slavery comparison comes from evidence that employed prisoners make an average of \$1 per hour. This money is often deducted to pay restitution and offset room and board or other prison fees, or it is sent to the prisoner's family.<sup>290</sup>

These disparities are particularly staunch in New York. About 93 percent of currently incarcerated people in New York are black or Latino, and about 75 percent of New Yorkers who have been in prison or jail at some point in their lives are black or Latino. The foundation for mass incarceration in New York is the “Rockefeller drug laws,” named after then-Governor Nelson Rockefeller. Signed in 1973, these laws strengthened sentencing for sale and possession of drugs, including mandatory minimum sentencing for drug crimes and, in some cases, mandatory life with parole. However, these laws were not strictly enforced by local law enforcement until the mid-1980s, at the height of the War on Drugs. Mirroring national trends, police officers were instructed to take a “broken windows approach” – arrest and charge for low-level crimes to preempt an onset of more violent, widespread crime down the road.<sup>291</sup> The concern about low-level drug offenses, combined with ramped-up law enforcement, resulted in racial profiling and disproportionate imprisonment of people of color in low-income communities. These laws were the first use of mandatory minimums in the US. Other state governments and the federal government later modeled their sentencing for drug crimes after New York.<sup>292</sup>

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<sup>289</sup> Ibid., 1 and 5-6.

<sup>290</sup> Craigie, Grawert, and Kimble, “Conviction, Imprisonment, and Lost Earnings,” 16.

<sup>291</sup> Mason B. Williams, “How the Rockefeller Laws Hit the Streets: Drug Policing and the Politics of State Competence in New York City, 1973–1989,” *Modern American History* 4 (2021): 67-69, and Marsha Weissman, “Aspiring to the Impracticable: Alternatives to Incarceration in the Era of Mass Incarceration,” *NYU Review of Law and Social Change* 33, no. 2 (2009): 249 and 262.

<sup>292</sup> Ames. C. Grawert, Cameron Kimble, and Jackie Fielding, “Poverty and Incarceration in New York: An Agenda for Change,” Brennan Center for Justice at New York University School of Law, February 23, 2021, <https://www.brennancenter.org/sites/default/files/2021-02/PovertyMassIncarcerationNY.pdf>, 5 and 8-9.

The Rockefeller drug laws were scaled back in the mid-2000s. In some cases, individuals arrested for low-level drug crimes were given the opportunity to renegotiate their sentencing. But New York is not out of the woods. It is still known for a stringent pretrial system. About 70 percent of people in New York's jails are "legally innocent." This means they are awaiting trial but cannot leave jail because they cannot afford bail. While individuals are waiting for trial, they can lose their job, home, and custody of their children. They also endure strain on their personal relationships and mental health, even though they have not yet been found guilty of a crime.<sup>293</sup>

New York must also reckon with the long-term effects of a prison and policing system that systematically targeted a generation of predominately low-income black and Latinx people.<sup>294</sup> These disproportionalities can still be found in incarcerated populations, both in New York and nationwide. Moreover, formerly incarcerated people earn about half of the wages on average over the course of their lifetime compared to people who are not incarcerated. Contributing to this statistic is workplace and hiring biases, legal barriers for people with felonies, and a lack of human and social capital for former prisoners.<sup>295</sup> Prisoners' rates of severe physical and mental health challenges, substance abuse, and homelessness are higher, and their projected mortality rates are lower.<sup>296</sup> As a result of the Rockefeller laws, the prison population of New York increased over fivefold from 1973 to 1999. This represents a generation of predominately black and Latinx men who comprise a marginalized underclass, even after serving their time.<sup>297</sup>

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<sup>293</sup> Gripper and George, "Schools Not Jails," 5 and 7.

<sup>294</sup> *Ibid.*, 8-9.

<sup>295</sup> Craigie, Grawert, and Kimble, "Conviction, Imprisonment, and Lost Earnings," 13-14.

<sup>296</sup> Giftos, Mitchell, and MacDonald, "Medicine and Mass Incarceration," 913; Grawert, Kimble, and Fielding, "Poverty and Incarceration in New York," 10, and Craigie, Grawert, and Kimble, "Conviction, Imprisonment, and Lost Earnings," 9.

<sup>297</sup> Weissman, "Aspiring to the Impracticable," 248.

Since mass incarceration has such far-reaching effects, it should not come as a surprise that there are negative spillover effects into educational outcomes. There are several aspects to this relationship, the first being the education of incarcerated people themselves. Prisoners have lower levels of education than the average general population.<sup>298</sup> About one-third of black men who do not have a high school diploma did not graduate because they were incarcerated. People who do not graduate high school are 3 to 4 times more likely to go to prison than high school graduates. It is estimated that 1 in 3 black men in prison do not have a diploma or GED, compared to 1 in 8 white men.<sup>299</sup>

One significant reason why young people end up incarcerated is the “school-to-prison pipeline.” This refers to the trend that a disproportionate number of students in poverty and students of color face harsh discipline and punishment in schools, which may influence them to drop out or lead to their admission in a juvenile detention facility or prison.<sup>300</sup> This is caused by escalatory responses to non-violent behavioral offenses, such as truancy, insubordination, and possession of drugs.<sup>301</sup>

Responses often include zero-tolerance policies and police intervention, including strip searches, which leads to a disproportionately high number of suspensions, expulsions, dropouts, and pushouts into alternative education programs, as well as long-term psychological trauma. High-stakes standardized tests and lack of appropriate modifications for students with special needs also push students out over time, which makes it more likely they will encounter the legal

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<sup>298</sup> Edwin, “From Mass Incarceration to Mass Education,” 8.

<sup>299</sup> Alexis Halkovic, “Redefining Possible: Re-Visioning the Prison-To-College Pipeline,” *Equity and Excellence in Education* 47, no. 4 (2014): 498.

<sup>300</sup> *Ibid.*

<sup>301</sup> Deborah N. Archer, “Introduction: Challenging the School-To-Prison Pipeline,” *New York Law School Law Review* 54, no. 4 (2010): 868-872.

system.<sup>302</sup> In fact, one court appearance makes it four times more likely that a young person will be incarcerated later in life.<sup>303</sup>

In addition to the school-to-prison pipeline, there is a multigenerational concern: children of incarcerated parents experience lower educational outcomes. Roughly one in four black children have a father who has been to prison. This number is twice as high for fathers who did not finish high school.<sup>304</sup> This has long-term impacts on students' schooling and personal well-being.

Children of incarcerated parents are more often diagnosed with cognitive learning disabilities and post lower reading and math levels, meaning they are also more likely to qualify for special education services. They are more likely to get in trouble in school, including participating in fights and being suspended. They have higher truancy rates and complete less years of school on average. They are less likely to go to college and more likely to be held back a grade or drop out. The higher dropout rate exists even when controlling for "race, IQ, home quality, poverty status, and mother's education." Studies have even been able to establish that a parent's incarceration *causes* fewer years of education.<sup>305</sup>

These children are also more likely to endure depression, anxiety, PTSD, migraines, and other severe mental and physical health challenges that affect learning. The stigma that comes with having an incarcerated parent can be distracting for children at school and is associated with lower academic performance. The trauma that children endure when witnessing a parent arrested,

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<sup>302</sup> Ibid.

<sup>303</sup> Gripper and George, "Schools Not Jails," 7.

<sup>304</sup> Christopher Wildeman and Emily A. Wang, "Mass incarceration, public health, and widening inequality in the USA," *The Lancet* 389 (2017): 1466.

<sup>305</sup> Leila Morsy and Richard Rothstein, "Mass incarceration and children's outcomes: Criminal justice policy is education policy," Economic Policy Institute, December 15, 2016, <https://www.epi.org/publication/mass-incarceration-and-childrens-outcomes>, 3 and 10, and Kristin Turney and Rebecca Goodsell, "Parental Incarceration and Children's Wellbeing," *The Future of Children* 28, no. 1 (Spring 2018): 151-152.

in court, or imprisoned can lead to inappropriate school behaviors and affect cognitive development. There are also long-term economic consequences of incarceration that impede students' educational progress. These consequences include loss of family income, substance abuse in the family, homelessness, and lack of upward mobility.<sup>306</sup>

The evidence is clear that incarceration has multigenerational impacts on educational outcomes. However, when politicians and scholars discuss criminal justice reform, it is not usually framed as an education reform issue. Economic and racial disparities are discussed, but the spillover effects on education tend to be a sidebar. It would behoove legislators and public policy researchers to get less bogged down in the minutiae of school funding debates and advocate for criminal justice reform as a wide-reaching, long-term solution to school funding inequities.

First, it is worth pointing out that simply reallocating prison funding to schools would bring benefits to students. New York state spends about \$22,000 per pupil per year, and New York City spends about \$28,000. However, the state spends an average of \$70,000 on each prisoner every year.<sup>307</sup> About \$3.7 billion is spent on state prisons every year. County jails receive \$2.5 billion a year, even though almost 70% of people in these jails have not been found guilty and are simply awaiting trial.<sup>308</sup> This embodies a broad national trend beginning during the War on Drugs – divesting in education and social programs and reallocating this money to fuel mass incarceration. This reprioritization has positioned prisons and jails to become *de facto* providers of housing and healthcare to prisoners, while police officers are tasked with mitigating

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<sup>306</sup> Morsy and Rothstein, “Mass incarceration and children’s outcomes,” 3, 10, and 13-14, and Turney and Goodsell, “Parental Incarceration and Children’s Wellbeing,” 148-149.

<sup>307</sup> Amin, “NYC spends a record \$28K per student, but the state is footing a smaller portion of that bill,” and Gripper and George, “Schools Not Jails,” 3.

<sup>308</sup> Gripper and George, “Schools Not Jails,” 3 and 6.



issues in school and in the streets that may be better left to teachers, school administrators, social workers, or therapists.<sup>309</sup>

Reimagining how state and federal funding can be more efficiently spent to address social problems is a missing piece of the school funding debate. This is particularly flagrant in New York, where the state government has been criticized for years for underfunding schools and not meeting its legal obligations.<sup>310</sup> Shifting the paradigm on where state funds are best spent is an important first step, as it would change the governing paradigm of legislators. The New York state legislature has the ability to overhaul where it allocates state funds.

Policymakers tend to take an “incremental approach” when addressing prison reform and other social inequities, which makes it difficult to enact systemic change. This is considered to be the easy route and less arduous than tackling major issues in a more comprehensive way.<sup>311</sup> There are several reforms that would alleviate some of the injustices associated with mass incarceration. This includes abolishing mandatory minimums for nonviolent drug crimes, which would shorten or eliminate prison sentences for these offenders and enable them to spend more time with their children.<sup>312</sup> It may also reduce the number of older students who fall into the school-to-prison pipeline because of school and legal punishments for minor drug offenses.

However, such reforms should occur alongside more fundamental changes in state funding priorities. For example, states could reduce the harmful effects of incarceration and save money by divesting from incarceration and engaging in more restorative justice practices. This includes providing drug treatment and mental health support for offenders in “community corrections” centers distinct from prisons, using “home confinement and remote monitoring” as a

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<sup>309</sup> Weissman, “Aspiring to the Impracticable,” 261.

<sup>310</sup> Gripper and George, “Schools Not Jails,” 3, 6-7, and 9-10.

<sup>311</sup> Morsy and Rothstein, “Mass incarceration and children’s outcomes,” 15.

<sup>312</sup> Ibid., 16.

substitute for imprisonment, and assigning community service as an alternative to jail time for nonviolent crimes.<sup>313</sup>

In schools, states should increase funding for special education services since these students are more likely to have incarcerated parents and fall into the school-to-prison pipeline themselves.<sup>314</sup> States can also offer “fiscal incentives” for municipalities to divest from prisons and use the funding for preventative programs in schools and the broader community. States that implement these programs have been found to improve student outcomes and contribute to a less punitive, more supportive school environment.<sup>315</sup> One study found that youth mentorship programs with an emphasis on training and programming for children of incarcerated parents are more likely to build sustaining relationships between youth and community role models, leading to higher student achievement.<sup>316</sup> In New York City, Mayor de Blasio’s “Framework for Great Schools” approach has increased mental health services and brought in community organizations to support students. However, more attention to the school-to-prison pipeline in New York City is needed, as black and Latinx students, as well as students in high-poverty schools, are significantly more likely to be suspended and arrested during their time at school.<sup>317</sup>

These reforms play a part in increasing “school funding” and improving educational outcomes, but in a more comprehensive way. They provide a long-term solution to funding gaps that state legislatures face every year. This funding could be allocated toward hiring more teachers, reducing class sizes, improving school facilities, and other common reforms. This

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<sup>313</sup> Weissman, “Aspiring to the Impracticable,” 237-238.

<sup>314</sup> Majd, “Students of the Mass Incarceration Nation,” 392.

<sup>315</sup> Ibid.

<sup>316</sup> Kathryn N. Stump, “Mentoring Program Enhancements Supporting Effective Mentoring of Children of Incarcerated Parents,” *American Journal of Community Psychology* 62 (2018): 171.

<sup>317</sup> Lynch and Mader, “Equity Means All, Not Some,” 24-25 and 33.

approach would also address racial bias in the criminal justice system, which has spillover effects into education that cannot be solved with increasing funding alone.

## **Conclusion**

The literature on the relationship between school funding and academic outcomes is not uniform. On an issue where there are so many variables, it is difficult to establish a causal relationship between these two factors. However, the research tentatively suggests that school funding does matter. When additional funding is spent on initiatives like smaller class sizes, higher teacher pay (and retaining higher quality teachers), academic intervention programs, and physical facilities, it tends to produce higher standardized tests and other favorable outcomes. Beyond these studies, there is a general sense in education policy that widely disparate levels of funding between school districts are unjust. Nearly half of school funding is from local property taxes. To offset this, many states allocate extra funds to high-poverty school districts, and federal programs usually focus on these districts as well. A complex web of court cases has forced some states to engage in this redistribution of funds.

New York is a microcosm of the multifaceted issues surrounding school funding. Initiatives in New York City have been linked to higher standardized test scores and graduation rates. However, the state legislature is legally obligated to allocate billions of dollars more statewide, which would hopefully result in even stronger academic outcomes. While new programs in New York City have been moderately successful, disparities between white and BIPOC students persist. This casts doubt on whether more state funding would close these gaps, or whether a solution beyond traditional funding proposals is needed.

Thanks to federal funding relief, state governments and school districts like New York and New York City may not have to worry about school budget shortfalls caused by the pandemic – for now. However, school funding concerns existed long before the COVID-19 pandemic. There needs to be a more sustainable solution in place to address inequities that have persisted for decades.

The case study of New York alongside nationwide studies demonstrate that criminal justice reform is one way academic achievement can be raised for students in poverty and black and Latinx students. There are a disproportionate number of black and Latinx people in prison, partially because of racially-discriminatory policies like mandatory minimum sentences for nonviolent drug offenses. Children of incarcerated parents experience worse educational outcomes and adverse effects on their physical and emotional well-being. Students who face endure disciplinary policies and unsupportive climates in schools are more likely to drop out and engage in more illegal activity later in life. There are several layers to how divesting from mass incarceration and reinvesting in public schools could result in better student outcomes, both inside and outside of the classroom.

Further research should assess the effects that criminal justice reform would have on the US public education system. This could be a key component of closing the “racial achievement gap” that has not been widely discussed. This should be part of a nationwide shift in the conceptualization of what equitable school funding looks like, as well as what is possible for the future. If scholars and politicians believe that current educational inequities are unacceptable, they should be more creative in devising long-term solutions. Increasing state education budgets or establishing new federal programs that make up an ultimately small percentage of school districts’ funding may not be enough to address academic gaps caused by deeper societal issues.

## Conclusion

This paper is driven by the research questions: Why do racial and economic inequities persist in the US educational system? What should be done to address these inequities? After assessing various aspects of the education system, it is clear that current education reforms have not adequately addressed the root causes of inequality. There are reforms within the field of education that are worth exploring, and transformative public policy in other areas of society, including housing and mass incarceration, is also needed to produce meaningful change for BIPOC students and students in poverty.

Chapter 1 is a historiography of the 50th anniversary of *Brown v. Board of Education* (1954). It assesses how scholars discussed the Supreme Court case's significance and legacy around the year 2004. There is also a section providing an update on the literature in the year 2014, the 60th anniversary of the Supreme Court case. Scholars largely agree that gaps between white and African-American students exist in schools. They are less unanimous on *Brown v. Board's* impact on racial justice as a whole. While some historians celebrate the case as a milestone in the country's path towards equality, there is a growing chorus who argues *Brown v. Board* was limited in its impact. While it was a significant event in US history, its role in achieving racial justice is often overstated.

Chapter 2 is an analysis of charter schools. This chapter focuses on who supports charter schools on the state level and which stakeholders are included in any successes. It examines two states known for their significant numbers of charter schools: Louisiana (with an emphasis on New Orleans) and Arizona. In both states, charter school construction was fueled by Republicans in state legislatures, despite the guise of bipartisan support. During their initial development, there was modest support for charter schools from African-Americans in New Orleans and

significant support from Latinx people in Arizona. However, these schools have not provided significantly better outcomes for BIPOC students.

Chapter 3 examines school funding for traditional public schools. The literature on school funding's salience is mixed, but it leans toward that funding does matter, depending on how much additional funding is provided and how it is spent. The first part of the chapter features the case study of New York, which has the highest per-pupil school funding in the country. Several recent studies suggest increased school funding has made a significant difference in graduation rates and standardized test scores for NYC students. Despite this, there are still significant gaps in student outcomes for BIPOC students and students in poverty, especially in New York City. The second part of this chapter explores mass incarceration's role on student outcomes and finds this is the more important "school funding" debate. First, African-American students disproportionately face racial discrimination in the juvenile justice system and in school disciplinary policies. This is broadly known as the "school-to-prison pipeline." Second, children of incarcerated parents face adverse educational and behavioral outcomes. This provides support for why funding should be reallocated from the criminal justice system to schools.

Before making policy recommendations on how to further address racial and economic inequities in schools, it is important to discuss the scope and limitations of the findings of this paper. First, the author acknowledges personal biases as a high school teacher. The author's interest in education reform is derived from this professional experience, particularly his years teaching at an Alternative Learning Center high school in Minneapolis. This could provide unique firsthand insight and lend itself to making a significant contribution to the field of education policy. However, anecdotal experiences and personal views on the subject matter could also have shaped or narrowed the research, including the crafting of arguments and

selection of sources. This does not make the findings or propositions in this paper inherently incorrect, but it also demonstrates why more than one perspective is needed on any issue to arrive at a more comprehensive understanding.

Second, this paper may not constitute “original” research in the sense that methods like a newly-designed statistical analysis or interviews conducted by the author were not employed. It is a series of findings about education policies and their effects on student outcomes, based on academic and journalistic sources. The paper does make a unique contribution to the field of government in the way it frames education policy issues. It is part of an emerging body of literature on education reform in the context of the COVID-19 pandemic, as well as a comparatively smaller body of literature on education reform after the murder of George Floyd. These national crises provide new perspectives and urgency for making schools better for BIPOC students and students in poverty, as discussed in the introduction section.

Moreover, this paper is relatively unique in the way it frames education reform as a broader societal issue. Intersecting public policy issues like poverty, housing, and the criminal justice system are referenced throughout the three chapters. Scholars of education are often aware of these issues and acknowledge them in their research, but education scholarly articles tend to analyze education reform possibilities as if they exist in a bubble that is unaffected by broader social problems. On the other side of the coin, political scientists and historians have a deeper understanding of governmental processes, but they do not usually have personal knowledge or experience of what goes on in K-12 classrooms, discussing educational issues in a more abstract way. Education policy also tends to be covered less by political scientists than other policy areas. Most legislating of education laws occurs on state and local levels of government, and local education administrators exercise a considerable amount of control over

decision-making and enforcement. This means that education policy may be less intriguing or may escape a deeper level of understanding for political scientists who err toward studying issues that are more federal in scope.<sup>318</sup> This paper attempts to bridge this gap by discussing education policies in depth while considering schools' relationships with other areas of social inequality.

This segues into the policy recommendations portion of the paper. There are several areas of reform worth pursuing – both in education and other areas of social policy – that would produce stronger results for BIPOC students and students in poverty.

Chapter 2 discusses the relationship between advocates and stakeholders of state-level charter school policies, as well as who ultimately benefits from charter schools. While urban charter schools perform at the same level or slightly above nearby traditional public schools, suburban and rural charter schools tend to perform at the same level or slightly below traditional public schools.<sup>319</sup> Using neoliberal logic, proponents argue that charter schools are value-neutral and simply offer more choice. More choices in the marketplace is inherently better than less, so students and families are free to choose what school works best for them. Detractors posit that charter schools deliver a false promise that they will provide a free, higher-quality education than traditional public schools. BIPOC supporters of charter schools argue they provide an “out” from failing public schools, while critics ask if higher standardized test results and graduation rates at some charter schools are worth the associated social costs.

Charter schools have existed in the US for nearly 30 years. About 7 percent of US public schools are charter schools, equaling about 7,000 charter schools and 3 million students.<sup>320</sup> Given their significant presence in the US, it is not feasible nor necessarily desirable to abolish charter

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<sup>318</sup> Jeffrey A. Raffel, “Why Has Public Administration Ignored Public Education, and Does It Matter?,” *Public Administration Review* 67, no. 1 (January-February 2007): 141-143.

<sup>319</sup> Angrist, Pathak, and Walters, “Explaining Charter School Effectiveness,” 24-25.

<sup>320</sup> “Public Charter School Enrollment.”



schools. However, there are two reforms that would address the most harmful aspects of charter schools:

First, strengthen regulations of for-profit charter schools. While Arizona is the only state that technically allows for-profit organizations to operate charter schools, it is common for for-profit entities to create non-profit organizations with the help of a for-profit Education Management Organization, or EMO. These for-profit entities may include “real estate corporations, holding companies, foundations, and finance corporations,” which proceed to provide a significant amount of profits made from operating charter schools to the EMO.<sup>321</sup> These entities may use charter schools for personal financial gain, ranging from hiked salaries for school administrators to self-benefitting real estate and construction business opportunities.<sup>322</sup>

For-profit charter schools siphon per-pupil funding from public school districts in their geographic area, yet they enroll a significantly lower number of free-and-reduced lunch students, English Language Learner students, and students with disabilities. This is presumably because these students require more financial resources to provide them with an equitable education.<sup>323</sup> The federal government should hold for-profit charter schools accountable for educational outcomes. These schools should not be eligible for public funding, as their profit motive exacerbates existing racial and economic inequities in student populations who are either taken advantage of or forced to pursue an education elsewhere.

Second, build and support urban charter schools that serve predominately BIPOC students and students in poverty in a mold other than the “no excuses” approach. “No excuses”

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<sup>321</sup> “Chartered for Profit: The Hidden World of Charter Schools Operated for Financial Gain,” Network for Public Education, March 2021, <https://networkforpubliceducation.org/wp-content/uploads/2021/03/Chartered-for-Profit.pdf>, 3-4.

<sup>322</sup> Ibid., 11.

<sup>323</sup> Ibid., 5, 9, and 24-27.

charter schools suggest that poverty and racial inequality should not be a predictor of students' success. They employ a strict, rigorous curriculum, rigid disciplinary policies, and sometimes a lengthened school year, with the principle goal of raising standardized test scores.<sup>324</sup> This approach ignores the impact that structural racism and poverty have on student outcomes. The "no excuses" approach minimizes the significant adversity that BIPOC students and students in poverty face in their lives. These schools often rely on programs like Teach for America (TFA) that bring in inexperienced educators to teach students whose background and experiences they do not understand.<sup>325</sup> Even if modest increases in standardized test scores and graduation rates have been achieved at some "no-excuses" charter schools, it is at the cost of dehumanizing the students these schools are meant to empower and nurture. This can have a negative impact on these students' social-emotional wellbeing.<sup>326</sup>

Instead of adopting a "no excuses" approach, urban charter schools should incorporate community stakeholders, adopt an anti-racist philosophy, and recruit and retain higher numbers of BIPOC teachers and administrators.<sup>327</sup> This includes rejecting TFA and other teacher corps programs that do not prioritize placing highly-trained and empathetic teachers in schools that serve students from marginalized backgrounds. Thirty years after its founding, TFA continues to displace experienced BIPOC educators with disproportionately white and affluent recent college graduates who use the experience as a jumping-off point for careers in other fields. The program plays an integral part in the staffing of charter schools that have not posted significantly better results than their public school counterparts. TFA alum have gone on to start some of the larger

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<sup>324</sup> Beth Sondel, Kerry Kretchmar, and Alyssa Hadley Dunn, "'Who Do These People Want Teaching Their Children?'" White Saviorism, Colorblind Racism, and Anti-Blackness in 'No Excuses' Charter Schools," *Urban Education* (April 2019): 2, <https://doi.org/10.1177/0042085919842618>.

<sup>325</sup> Ibid., 4-5.

<sup>326</sup> Ibid., 5-8 and 15-21.

<sup>327</sup> Ibid., 23-24.

charter school networks in the country, perpetuating this cycle.<sup>328</sup> These charter school reforms would represent a return to the original vision of social justice-oriented educators like Albert Shanker who supporter charter schools as a model for education reform at the time of their conception.<sup>329</sup>

Chapter 3 begins with an analysis of school funding for traditional public schools. In 2016, about 45 percent of school revenue was from local governments, 47 percent was from state governments, and 8 percent was from the federal government.<sup>330</sup> Due to the emphasis on state and local sources of funding, it is estimated that “majority-nonwhite districts get \$23 billion less in funding every year than majority-white districts, despite having the same number of students.” This is directly caused by the homeownership gap between white and BIPOC people in the US, which is the result of redlining, predatory loans, and broader racial and economic inequalities.<sup>331</sup>

Based on a general sense in the academic literature that increasing school funding leads to better student outcomes, one organization estimates that an extra \$150 billion in federal funding would significantly increase reading and math scores for students from underresourced schools.<sup>332</sup> This may not be a realistic number to expect from the federal government, which leaves most funding to the state and local levels and has never more than 13 percent of

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<sup>328</sup> Helen Baxendale, “Backlash and Beyond: What Lies Ahead for Teach For America?,” Education Week, Editorial Projects in Education, Inc., May 29, 2020, <https://www.edweek.org/education/opinion-backlash-and-beyond-what-lies-ahead-for-teach-for-america/2020/05> and Ann Marie Coviello, “30 Years of Teach For America Shows How Reform Movements Can Become Co-opted,” Truthout, Truthout, July 15, 2020, <https://truthout.org/articles/30-years-of-teach-for-america-shows-how-reform-movements-can-become-co-opted/>.

<sup>329</sup> Ravitch, *The Death and Life of the Great American School System*, 122-126 and Elisabeth E. Lefebvre and Matthew A. M. Thomas, “‘Shit shows’ or ‘like-minded schools’: charter schools and the neoliberal logic of Teach For America,” *Journal of Education Policy* 32, no. 3 (2017): 358.

<sup>330</sup> Leachman and Figueroa, “K-12 School Funding Up in Most 2018 Teacher-Protest States, But Still Well Below Decade Ago.”

<sup>331</sup> Anna North, “How school funding can help repair the legacy of segregation,” Vox, Vox Media, February 17, 2021, <https://www.vox.com/22266219/biden-education-school-funding-segregation-antiracist-policy>.

<sup>332</sup> “Closing America’s Education Funding Gaps,” The Century Foundation, July 22, 2020, <https://tcf.org/content/report/closing-americas-education-funding/?agreed=1>.

nationwide school funding in a given year.<sup>333</sup> However, a new federal grant program that targeted schools with high populations of BIPOC students and students in poverty would likely improve student outcomes. School districts that receive funds could be required to demonstrate measurable gains for their students to continue to be eligible for the funding.<sup>334</sup>

Chapter 3 goes on to discuss the influence of mass incarceration on educational outcomes. The end of the chapter calls for divesting from mass incarceration and reinvesting in public education. What exactly would this look like? State corrections budgets have skyrocketed since the War on Drugs in the 1980s, even though crime rates fell in the 1990s. If states' corrections budgets merely stayed on pace with inflation since the mid-1980s, an additional \$28 billion would have been freed up nationwide. Meanwhile, 30 states have lower education budgets than before the Great Recession, even after accounting for inflation. This demonstrates that state funding is available to be reallocated from corrections to education.<sup>335</sup>

A major reason why state corrections budgets have gone up significantly over the past few decades is because there are more prisoners. Over 2 million people are in prison or jail in the US, which represents a 500 percent increase over the past 40 years. The number of people incarcerated for drugs was approximately 430,926 in 2019, more than 10 times the number in 1980. The average sentence for a federal drug offense increased from 22 months in 1986 to 62 months in 2004. The number of people serving life sentences has also steadily increased in the

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<sup>333</sup> Chingos and Blagg, "Do Poor Kids Get Their Fair Share of School Funding?"

<sup>334</sup> Scott Sargrad et al, "Public Education Opportunity Grants: Increasing Funding and Equity in Federal K-12 Education Investments," Center for American Progress, October 2020, [https://cdn.americanprogress.org/content/uploads/2020/10/07105905/Public-Education-Opportunity-Grants-1.pdf?\\_ga=2.122985931.1912301406.1626034356-1159215364.1626034356](https://cdn.americanprogress.org/content/uploads/2020/10/07105905/Public-Education-Opportunity-Grants-1.pdf?_ga=2.122985931.1912301406.1626034356-1159215364.1626034356), p. 3-5.

<sup>335</sup> Michael Mitchell and Michael Leachman, "Changing Priorities: State Criminal Justice Reforms and Investments in Education," Center on Budget and Policy Priorities, October 28, 2014, <https://www.cbpp.org/sites/default/files/atoms/files/10-28-14sfp.pdf>, p. 1.

1980s. Racial disparities persist in incarcerated populations, as black men are six times more likely and Latinx men are 2.5 times more likely to be incarcerated than white men.<sup>336</sup>

States can divert funds from mass incarcerating to education “by reclassifying low-level felonies to misdemeanors where appropriate, expanding the use of alternatives to prison (such as fines and victim restitution), shortening jail and prison terms, and eliminating prison sentences for technical violations of parole/probation where no new crime has been committed.”<sup>337</sup> This funding could be reallocated to school districts with lower levels of local funding and used in areas with demonstrates results for students, including expanding access to preschool and reducing class sizes.<sup>338</sup> Bipartisan support for criminal justice reform has increased in the past few years. This makes divesting in mass incarceration and reinvesting in education more feasible than simply increasing federal funding for schools, particularly if funding reforms can occur on the state and local level where results will be more evident sooner.<sup>339</sup>

The final suggestion to facilitate meaningful education reform is to look beyond the “achievement gap.” This is usually defined as the gap between white students and African-American and Latinx students.<sup>340</sup> Gloria Ladson-Billings proposes focusing on students’ “education debt” instead. This acknowledges that schools serving predominately black, Latinx, and indigenous students have been chronically underresourced for generations. This has occurred alongside systemic racism and economic inequality, as evidenced in disparate access to higher education, employment opportunities, housing, and health care.<sup>341</sup> This is why Ladson-Billings

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<sup>336</sup> “Criminal Justice Facts,” The Sentencing Project, The Sentencing Project, n.d., accessed July 8, 2021, <https://www.sentencingproject.org/criminal-justice-facts>.

<sup>337</sup> Mitchell and Leachman, “Changing Priorities,” 1.

<sup>338</sup> Ibid., 10-12.

<sup>339</sup> Miriam S. Gohara, “Keep On Keeping On: Maintaining Momentum for Criminal Justice Reform During the Trump Era,” *Stanford Journal of Civil Rights and Civil Liberties* XIV, no. Special Issue (2018): 1-7.

<sup>340</sup> Gloria Ladson-Billings, “From the Achievement Gap to the Education Debt: Understanding Achievement in U.S. Schools,” *Educational Researcher* 35, no. 7 (October 2006): 3.

<sup>341</sup> Ibid., 5-10.

argues that societal inequalities are the principle source of the achievement gap; the achievement gap is a symptom, not a cause, and it has the potential to be a distraction from deeper issues. Until politicians and the general public are interested in addressing these fundamental issues as a nation, the “achievement gap” and other racial and economic inequities in education will remain.<sup>342</sup>

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<sup>342</sup> Ibid., 8-10.

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